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THE UNDERCOVER INVESTIGATION OF ROBERT L. VESCO'S ALLEGED ATTEMPTS TO REVERSE A STATE DEPARTMENT BAN PREVENTING THE EXPORT OF PLANES TO LIBYA

STAFF REPORT

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

SEPTEMBER 1982

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[97th Congress]

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LETTER OF TRANSMITTAL

SEPTEMBER 15, 1982.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: The investigation of fugitive financier Robert Vesco's alleged attempts to subvert American foreign policy concluded on May 31, 1982. In late June 1982, a report of that investigation, prepared by John P. Flannery II, Special Counsel to the Committee, was circulated to your staff, Senator DeConcini's staff, and me. I have reviewed it carefully. I recommend and request that the report be printed as a staff report.

Sincerely,

ORRIN G. HATCH,
U.S. Senator.

PREFACE

I. The Staff Report

The Judiciary Committee's oversight of the Public Integrity Section (hereinafter the P.I. Section) of the United States Department of Justice (hereinafter the Department) led the Committee to scrutinize that Section's handling of politically sensitive cases. The Committee paid special attention to the Department's undercover investigation of Robert L. Vesco's alleged attempts to reverse a State Department ban preventing the export of planes to Libya by contacting Administration Officials through John C. White, then Chairman of the Democratic National Committee. The Committee not only considered (a) how the undercover investigation was conducted but also (b) the Department's decision not to appoint a special prosecutor and (c) the Department's decision to close the case as to Mr. White without indicting him. The Department's undercover investigation and prosecutorial decisions are the subject of the staff report that follows this preface. The spur to the Committee's efforts concluding with the accompanying staff report are described in this preface.

II. Origin of the Inquiry

A. COMMITTEE REQUESTS CASE FILES CLOSED BY PUBLIC INTEGRITY SECTION

In Spring 1980, during authorization and oversight hearings of the Department, the Committee learned of allegations that the P.I. Section performed "inadequately", particularly in politically sensitive cases. Senator Edward Kennedy, then Chairman of the Committee, acting on behalf of the full Committee, empowered Senators DeConcini and Hatch to conduct a full oversight investigation of the P.I. Section.

They immediately requested that the Department produce Thomas P. Henderson, then Chief of the P.I. Section, to give sworn testimony. The Justice Department initially refused to produce Mr. Henderson. The Department and the Committee therefore began to negotiate not only about Mr. Henderson's appearance but also about whether the Committee would have access to sensitive case files that the P.I. Section closed. The negotiations concluded with an agreement that Thomas Henderson would appear before the Committee on December 11, 1980 and the Department would permit the Committee to have access to fifteen case files closed by the P.I. Section.

B. AMONG THE FILES REVIEWED IS THE "VESCO" FILE

Among the files reviewed by the Committee was one alleging attempts by the oft-indicted fugitive financier Robert Vesco to bribe Carter Administration officials to permit him to escape extradition to the United States. The foreman of the Grand Jury investigating this allegation told the Committee that the Department of Justice mishandled the investigation. Mr. Vesco himself asked the Committee to give him an opportunity to tell the Committee what happened. Senators DeConcini and Hatch, accompanied by several staff members, met Mr. Vesco in the Bahamas; Mr. Vesco lodged serious charges against prominent members of President Carter's Administration including Hamilton Jordan, the President's Chief of Staff.

On July 23, 1980, the Committee therefore passed a resolution authorizing the Subcommittee on Improvements in Judicial Machinery (hereinafter the Subcommittee), then chaired by Senator DeConcini, to conduct an investigation into "any and all contacts between Robert Vesco and officers and employees of the United States." Senator Hatch was appointed an ex officio member of that Subcommittee for the purpose of that investigation.

C. THE SUBCOMMITTEE REVIEWS ANOTHER ALLEGED ATTEMPT BY VESCO TO RELEASE PLANES TO LIBYA

During its investigation, the Subcommittee was apprised of a second alleged attempt by Robert Vesco not only to permit him to avoid extradition but also to reverse this nation's ban against exporting planes to Libya. Vesco allegedly tried to obtain the release of the planes by contacting Administration officials including Hamilton Jordan through DNC Chairman White.

The Subcommittee therefore continued its investigation into all the "Vesco" allegations. In response to Grand Jury Foreman Ralph Ulmer's allegations, the Subcommittee questioned him in Executive Session on August 5 and 19, 1980. The Subcommittee also requested the exhibits introduced in the same grand jury proceedings in the District of Columbia. The Department refused to comply and sought an order from the U.S. District Court for the District of Columbia precluding the release of the requested Grand Jury exhibits. By Senate Resolution 553, 96th Congress, 2nd Session, the Senate authorized its Counsel to appear before that Court on behalf of the Subcommittee to obtain the requested exhibits and the Court ordered the Department to produce them.

The Subcommitee held public hearings on October 2, 3, 23, and 24, 1980 covering Vesco's attempts both to avoid extradition and to obtain the release of the Libyan planes. The Subcommittee's inquiry into Vesco's conduct necessarily provided a detailed account of the Department's conduct of its undercover investigation. The FBI informant, James Brewer, testified how the undercover investigation began and what he said and did once it was underway. Another informant from the Southern District of New York, James Feeney, brought into the investigation by Brewer, also appeared but refused to testify; following his cooperation, he was indicted in Denver and New York and, as a result, invoked his Fifth Amendment constitutional privilege to remain silent. James Day, one of the principal targets of the undercover investigation—indeed the first person that Brewer spoke to in the undercover investigation, appeared; like Mr. Feeney, he invoked his privilege to remain silent. Steven J. Wilson, formerly Chief Financial Officer of the Charter Oil Company testified regarding Charter Oil's business dealings with Vesco. Spencer Lee IV and Harry Wingate, attorneys from Albany, Georgia, responded to questions about what, if anything, they had done to help Vesco contact members of President Carter's White House staff. Richard Harden, Special Assistant to the President and allegedly Mr. Lee's White House contact, also testified.

III. REVIVING THE INVESTIGATION OF VESCO'S ATTEMPTS ON BEHALF OF THE LIBYANS AFTER THE ELECTIONS

Following the November 1980 election, Senator Strom Thurmond became Chairman of the Committee and the Subcommittees were reorganized. Despite these changes, Senators Hatch and DeConcini advised the Chairman that they believed that the oversight investigation of the P.I. Section was important and should be continued, particularly that investigation of Vesco's alleged contacts with Administration officials. The investigation was funded, staffed again and became an investigation of the full Committee.

Despite substantial budget cuts, a supplemental appropriation to permit the Committee to continue its work was approved by this Committee (see Senate Report 97-200), by the Committee on Rules and Administration (see Senate Report 97-261), and by the Senate in Senate Resolution 222 on November 6, 1981.

The Committee assembled a new investigative staff since all but two of the ten staff persons from the original investigation had left the Senate.

The Committee authorized a full Committee investigation of the Public Integrity Section and of Vesco's activities by resolution dated February 2, 1982. The resolution authorized Senator Thurmond as Chairman of the Committee to authorize and issue subpoenas, to notice depositions to be conducted by the staff, and to call meetings and hearings pertaining to the investigation.

The Committee also issued resolutions on February 2, 1982 and March 17, 1982 as to Messrs. Day and Feeney respectively directing the Senate Legal Counsel to obtain a court order to immunize them. U.S. District Judge Hart of the United States District Court for the District of Columbia signed both immunity orders on March 23, 1982, thereby assuring the Committee of their testimony when the hearings resumed on March 29, 1982.

Before the hearings resumed, Committee staff reviewed voluminous testimony and numerous exhibits introduced at trial and hearings including those held in camera in *United States* v. *Feeney*, *et al*, Crim. Action No. 80-Cr.-54 (D. Colo.) (Winner Chief J.). The in camera materials were obtained by subpoena duces tecum by the Committee. Perhaps the most significant evidence obtained by the Committee were these in camera materials for they included sixty undercover tapes and the corresponding transcripts of those tapes, daily investigative notes, and the Department's recommendation not to appoint a special prosecutor.

When the hearings resumed on March 29, Messrs. Day and Feeney appeared, use immunity was conferred, and they testified. John C. White, former DNC Chairman, implicated in Vesco's attempts by informants Brewer and Feeney and therefore the subject of the undercover investigation, testified before the Committee on March 30, 1982.

IV. CONCLUDING THE INVESTIGATION

Following the public hearings, the Committee appointed Special Counsel, John P. Flannery II, to review the Committee's tentative findings, conduct what remaining depositions or interviews were required and to draft a report. Sara Shirley Rogers, Counsel to the Committee, Edward Baxter, Minority Investigator, Margaret Bachman, Research Assistant, and Robin Bradford, Executive Assistant assisted.

They reviewed cartons of Mr. White's personal documents including his daily logs, listened and transcribed a taped debriefing of Mr. White by the Southern District of New York—previously unknown to the Committee, debriefed agency officials about, among other things, the use of C–130 military transports for agricultural purposes, and deposed Mr. White on May 14, 1982.

As a result of the staff's preliminary findings, the Committee staff requested of U.S. Attorney John Martin, who had closed the Southern District's investigation as to White, that he produce the Grand Jury testimony of Mr. White. Upon refusing that request, the Committee staff asked him to join the Committee in requesting the Court to order the release of said testimony; U.S. Attorney Martin refused again. The Assistant handling the case for Mr. Martin and the investigator who had helped that Assistant both testified in the Denver matter. Mr. Martin did not testify. The Committee Chairman therefore requested that the Department make Mr. Martin available to be deposed. The Department said that the Committee staff could interview him but not depose him, presumably objecting to an accurate transcript of statements sworn to be true. To determine if that was the basis of the Department's objection(s) to a deposition, the Committee staff requested a letter setting forth the Department's objection(s). The Department promised a written response to this Committee's Chairman by close of business on May 18. As the Committee concluded its business on May 31, 1982, the Department had not responded.

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THE REPORT: THE UNDERCOVER INVESTIGATION OF ROBERT L. VESCO'S ALLEGED ATTEMPTS TO REVERSE STATE DEPARTMENT BAN PREVENTING THE EXPORT OF PLANES TO LIBYA

I. INTRODUCTION

There is no question that well-considered, supervised and innovative undercover activities are beneficial and necessary to detect the subtlest forms of artifice that otherwise would go undiscovered. This report is filed, however, when undercover techniques including the use of paid informants, authorized deceptions and concealed audio and video recording devices by federal law enforcement agencies are subject to question.

The public and the Congress ask what facts are sufficient to justify beginning an undercover investigation? What should the government be permitted to do when it starts such an investigation? How long should an investigation continue, against what additional individuals discovered during the investigation, under whose supervision, with what intra-departmental coordination, and under what circumstances should the investigation be terminated? Our review of the undercover investigation of fugitive financier Robert Vesco's attempts to reverse a State Department ban preventing the export of planes to Libya required us to consider all these questions.

We examined how the Vesco investigation began. The FBI informant spent four months devising a way for the subjects of the investigation to meet Vesco. They would very likely never have met Vesco but for the FBI informant. One of the subjects of the investigation said in a taped conversation that "he always wanted to meet the man [Vesco]" and "hadn't the slightest idea" how to meet him. After he met Vesco, he said, "I don't think I've ever been more impressed in my life."[1]

Once the investigation began, it was critical that the investigation proceed carefully. The object of the putative conspiracy was to reverse the State Department's ban against exporting military planes to a terrorist nation. The FBI was not investigating a conspiracy to bribe a public official to introduce a bill in Congress for a chimerical sheikh promoting an imaginary project. If the object of this conspiracy succeeded, the effect on U.S. foreign policy would be profound. This investigation therefore begs the question: How far may the Justice Department go before its imperative to investigate is outweighed by competing considerations such as, in this case, the integrity of American foreign policy?

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[1] For details about the FBI informant's first meeting with the targets of the investigation, and with Vesco, thereafter, see notes 10–17, 173–175, infra, and the accompanying text.

In such an investigation, we would expect the Department to supervise and coordinate so as to avoid intradepartmental conflicts and confusion. In the latter part of this investigation, the Department nevertheless cut off funds at an important juncture in the case. The Department received "specific information" that the President's Chief of Staff and the President conspired with John White, then Chairman to the Democratic National Committee (hereinafter the DNC), to receive a bribe in connection with the release of Libya's planes. This specific information triggered the 90-day "preliminary investigation" required by the Ethics in Government Act (hereinafter the Act) to determine whether a Special Prosecutor should be appointed. During that preliminary investigation, the Southern District requested funds for an informant who was not an FBI informant; the informant was cooperating with the Southern District. The Southern District expressly told the FBI that, if the FBI refused the funds, the informant's "future participation in the Libyan deal and association with the investigative subjects [would] be completely terminated or so limited . . . as to eliminate [the Southern District informant's] effectiveness as a source of information." The FBI denied the funds. The Department then recommended that a Special Prosecutor not be appointed; this recommendation was necessarily based on the evidence gathered during the 90-day period.[2] The next day after the Department's recommendation not to appoint a Special Prosecutor, the FBI approved more money than they had refused to the Southern District to offer a bribe to Mr. White.

As for how this undercover investigation ended, unspecified sources leaked the information to reporters and when the story appeared, the undercover investigation was over.[3]

We also considered the prosecutorial decisions inextricably intertwined with the undercover investigation including the recommendation not to appoint a Special Prosecutor, to prosecute the Southern District's informant, and to close the case as to Mr. White without indicting him. After Mr. White's second Grand Jury appearance, the Assistant U.S. Attorney in the Southern District told Mr. White that "there were a number of *serious inconsistencies* between the evidence developed during the course of the investigation and White's Grand Jury testimony" (emphasis supplied).[4] He advised Mr. White with some precision of "the evidence developed during the course of the investigation" and during a taped interview of White said, "It must be evident to you [Mr. White] that we [the Southern District] are disclosing to you in a way that is *very different from most criminal investigations* in an attempt to be as fair as we can be . . . information that people in your position are *not usually made privy to*" (emphasis supplied). Following that interview, the Southern District did not ask Mr. White to appear again or to produce any documents. In November 1981, U.S. Attorney John Martin, through his Assistant, informed Mr. White's attorney that the case as to Mr. White was closed without indicting him.[5]

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[2] For details about the "specific information" received by the Department, the conduct of the 90-day preliminary investigation, the decision not to fund the principal informant during the 90-day period and the Department's recommendation not to appoint a Special Prosecutor, see notes 198–231, infra, and the accompanying text.

[3] For details about the press accounts, see notes 238–241, infra, and the accompanying text.

[4] For details about the first and second Grand Jury appearance of Mr. White and the Assistant U.S. Attorney's statements to Mr. White, see notes 248–257, 324–332, infra, and accompanying text.

There is more. It is the subject of this report. The undercover investigation and the prosecutorial decisions described and analyzed in this report are material to the investigation of the Select Committee established by Senate Resolution 350 "to conduct an investigation of the activities of components of the Department of Justice in connection with their law enforcement undercover operations". That Committee specifically requested this report[6] and it shall be supplied in compliance with that request and in accordance with the aforesaid resolution in order to enable the Select Committee to "recommend such legislation as the Committee deems necessary or desirable."

II. Findings

A. BACKGROUND

1. David Dunlop Newsom, Ambassador to Libya

In 1965, David Dunlop Newsom was appointed Ambassador to Libya. In June 1967, he helped evacuate 6,000 Americans following the Six-Day war. In 1969, he returned to Washington, D.C. as Assistant Secretary of State. In late 1978 following discussions with Libya he would agree to reverse the State Department's ban against the export of planes to Libya.[7]

2. Mu'ammar Qaddafi, Libya's Leader

In 1969, Mu'ammar Qaddafi assumed power in Libya by ousting King Idris. Newsom testified that Qaddafi's supporters "believed that the influence of the United States and Britain had prevented Libya from playing its rightful role in the struggle against Israel, and particularly in the 1967 war." He said, "They vowed to change that by closing the British and American bases in Libya, by acquiring large quantities of arms, and by supporting anti-Israel and revolutionary causes everywhere."[8]

In the following years Qaddafi established himself as a leader of the Islamic Revivalist movement, ally to the Palestinian Liberation Organization (hereinafter the PLO), adversary to Anwar Sadat of Egypt, foe to Israel and he made it crystal clear that, after oil, Libya's chief export was terrorism.

3. Libya's planes and the State Department's ban against their export

Qaddafi acquired aircraft for his civilian and military air forces and—this is where his problems arose—for his terrorist activities as well.[9]

The Libyans bought eleven Boeing 727 (hereinafter the 727s) planes for $30 million in 1970; all but two of them were delivered by 1978.

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[5] For details about statements made to Mr. White and decisions made by the U.S. Attorney for the Southern District, see notes 333–352, infra, and accompanying text.

[6] The Select Committee made this request of Chairman Thurmond of the Committee in a letter dated May 27, 1982.

[7] Hearings before the Subcommittee to Investigate Individuals Representing the Interests of Foreign Governments. Committee on the Judiciary, 96th Congress, 2d session 11 (Statement of Undersecretary of State David Newsom) [hereinafter cited as Newsom]; R. Shaplan, "Newsom Profile: Eye of the Storm—II," New Yorker, June 1980, at 729.

[8] Newsom. supra note 7, at 7.

[9] New York Times, June 24, 1980, Business Section, at 1.

Libya paid $65 million for three Boeing 747s (hereinafter the 747s); none of these were delivered by 1978.

As for the military aircraft, Libya ordered 16 Lockheed C–130 Hercules aircraft (hereinafter referred to as C–130s) for about $100 million in 1973. Eight C–130s were delivered by 1976.

Starting in 1976, the State Department reacted to the export of planes to Libya.

In 1976, the State Department blocked the export of any C–130s remaining in the United States charging Libya with using the C–130s for terrorist activities.

In 1977, the State Department extended its ban to prohibit the export of spare C–130 parts, on-site maintenance in Libya, and the return of any C–130s to the United States for overhaul.

In early 1978, the eight C–130s sat unused, warehoused on a landing strip at Lockheed's plant in Marietta, Georgia. In 1978, President Carter extended the State Department's ban to include the 727s, 747s, and 400 heavy duty commercial trucks that Libya ordered earlier that same year. The State Department argued that even civilian aircraft could be used to transport troops and the trucks could be used to tow Libya's fleet of Soviet built tanks.

Thus, by early 1978, the Libyans were prohibited from receiving either civilian or military planes or any trucks. Particularly irksome to Libya was that they were denied the rest of their C–130s.

B. THE UNDERCOVER INVESTIGATION

1. The FBI Informant: James Brewer

In 1978, James W. Brewer, indicted that year for mail fraud, agreed to "cooperate" with the Federal Bureau of Investigation (hereinafter the FBI) to become an FBI informant, to be a "confidential source." [10]

He helped the Miami office of the FBI uncover offshore bank scandals involving phony or improperly used cashier's checks, letters of credit, or securities.[11] He offered opportunities to individuals, "targets" presumably predisposed to commit crimes and reported the target's conduct to the FBI. James "Jimmy" Day was one such target.

Brewer had been Assistant to Shearn Moody, President of the American National Life Insurance Company (hereinafter American). The Moodys had wealth and invested some of it in Texas political campaigns and Day of Austin, a former Texas Representative, lobbied for them.[12]

Brewer states that Day told him in April 1978 that Hamilton Jordan, then White House Chief of Staff and John C. White, Chairman of the Democratic National Committee said they "were not too confident that Carter was going to make it again and they were interested in deals to make money." [13] There is no question that President

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[10] Hearings before the Subcommittee on Improvements in Judicial Machinery, Committee on the Judiciary, 96th Congress, 2d session 276–77 (Testimony of James Brewer) [hereinafter cited as Subcommittee Hrg. Tr.]

[11] Id. at 277–78.

[12] Id. at 279.

[13] Id. at 280; Hearings Concerned Alleged Contacts between Robert L. Vesco and Officials and Employees of the United States Government before the Committee on the Judiciary, 97th Cong. 1st Sess., Mar. 30, 1982 hearing transcript, p. 3 (testimony of James Day) [hereinafter cited as Committee Hrg. Tr.]

Carter's performance was rated as poor in the polls and the Democratic party treasury was no better [14] but Day's statement to Brewer is the only evidence that this meeting occurred or that these matters were discussed at that meeting.

Brewer says that Day asked him to arrange a meeting with fugitive financier Robert Vesco [15], then in the Bahamas, to "do something about Vesco's problem." Day claims that contacting Vesco was Brewer's idea, not his. Whoever started it, neither Brewer nor Day knew Vesco when the subject arose. Brewer did not even know how to contact Vesco when he spoke to Day but he said he would try. Day told Brewer that any "deal" with Vesco would have to involve $1 million or more" for Day's contacts in President Carter's Administration.[16]

2. After four months, the FBI informant arranges a meeting for Day with Vesco

Brewer did try. He tried for about four months. He recorded his attempts to set up a meeting with Vesco and gave the tapes he made to the FBI. Finally he succeeded. He took Day and James Wohlenhaus, another Moody aide to the Bahamas. On September 4, 1978, they met Vesco for the first time.[17] Without Brewer, neither Day or Wohlenhaus would have met Vesco.

a. Vesco wants to escape extradition.—Vesco told them what he wanted. He said that he had tried to avoid extradition and get away with no more than "a tap on the wrist" by sending Spencer Lee IV, a Georgia attorney, to make "contact" in the White House with Hamilton Jordan or Richard Harden and he believed that Mr. Lee had made contact. But the effort had failed.[18] Vesco said he therefore had newspaper columnist Jack Anderson "down here [in the Bahamas] several times" and given him "only so much [information] as to get it [news coverage] started." Vesco told them that "within a week, you'll be reading [about] this" and "I'm sure there's going to be a Gand Jury Investigation." Vesco thought "public pressure" might help him get what Mr. Lee had failed to deliver.[19]

Vesco said he realized that he was "very hot now" and that it was no longer possible to get away with "a tap on the wrist". But he imagined that he could still solve his problem, following the publication of Anderson's columns, if he "came to the United States and testif[ied] either to the Grand Jury or a Senate Committee." Vesco said that he would "clear all the names of the people in the Carter Administration." In return, he wanted the Administration to revoke his citizenship thereby permitting him to become a foreign national immune from extradition. As U.S. marshals carried him away, Vesco imagined he would say, "I've paid the supreme cost." Brewer believed Vesco wanted to return to Costa Rica where Vesco had his principal investments.[20]

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[14] The Harris poll for Apr. 19–20, 1978 concluded that two-thirds of adult Americans rated President Carter negatively. See "Carter's Job Rating Plummets in Two Polls to a 15 Month Low", Washington Post, Apr. 27, 1978, at A4. The succeeding Harris poll rated President Carter even worse. See "Poll Shows Citizens Think Carter Has Done Little", N.Y. Times, May 5, 1978. As for party finances, DNC Chairman White reportedly said in early 1978 that the Democratic Party had less than $200,000 "on hand" and owed more than $2.3 million; the Republican Party then had almost $3.2 million in their treasury. See A. Clymer. "For the Democrats a Need to Catch Up", N.Y. Times, May 28, 1978.

[15] Robert Vesco fled the United States for Costa Rica as a two-year investigation into his affairs by the Securities Exchange Commission (hereinafter SEC) drew to a close. As a result of the investigation, Vesco was indicted with about 40 other individuals and corporations for illegally diverting more than $224 million. In 1973, he was indicted in the Southern District of New York for "interfering and obstructing" the earlier SEC investigation; among other things, he was charged with conspiring to make a $200,000 illegal campaign contribution. See Indictment, *United States* v. *Mitchell et al*, 73 Cr. 439 (SDNY), filed on May 10, 1973. Since 1972, Vesco has been named in other criminal and civil actions and avoided extradition from Costa Rica by fleeing to the Bahamas where he resided in 1978.

[16] Subcommittee Hrg. Tr. 280 (testimony of Brewer); Mar. 30, 1982 Committee Hrg. Tr. 16 (testimony of Day).

[17] Subcommittee Hrg. Tr. 283 (testimony of Brewer); Mar. 30, 1982 Committee Hrg. Tr. 3 (testimony of Day).

[18] Subcommittee Hrg. Tr. 219 (testimony of Brewer).

[19] Id.

b. Vesco wants Libya's planes released.—After his own "problem", Vesco had another preoccupation. He wanted the United States to release the embargoed Libyan planes. Vesco said that he had a Libyan partner, the "third [man] in power" in the Libya government, Major Abdul Salaam Jalloud, Colonel Qaddafi's Deputy. Vesco told Day, "If they [The State Department] would release the airplanes, then the [unidentified] people in Washington can get paid [$7.5 million] out of the airplane deal [and] I can get paid [$7.5 million]".[21] Vesco mentioned the 727s and 747s; he did not mention the C–130s at their first meeting.[22] Day explained that their $7.5 million "payoff" was the difference between the historical cost and current 1978 market value.[23]

Day responded, "I'll have to . . . have a meeting with Mr. White with my people [unidentified] from Washington and then I'll get back to you with [sic] this proposition." [24]

On September 11, Anderson ran the column Vesco had said was coming: "Vesco Bid Aimed at Jordan, Kirbo". Anderson's first column was followed by eleven more in September and October. They described how Vesco tried to wriggle free of the Justice Department's extradition requests by seeking the assistance of high level Carter officials including Hamilton Jordan.[25]

On October 3, according to Brewer, Day reported White's reaction to Vesco. White denies that he spoke to Day prior to April 18, 1979. White supposedly said, "There's no way that we can have your [Vesco's] indictments and the charges dropped [and] we don't think we are interested in even having you come [back] to the United States," much less to testify. But White said, "Let's talk about the [Libyan] airplanes" [26] and they did. Day and informant Brewer returned to the Bahamas to discuss the release of the Libyan planes, specifically how the Libyans would pay if Vesco, Day and their associates succeeded in obtaining their release. They agreed the monies should be paid into an escrow account to be established in a then unspecified European bank.[27]

3. The State Department, represented by Newsom, releases the 727s

Following Day's return from the Bahamas, David Newsom met with the Libyan Foreign Secretary "to discuss our relations." [28] Newsom said that Libya "agreed to provide in writing assurances that the [Boeing 727] aircraft involved in the sale [to Libya] would not be used for military purposes" and the State Department agreed to reverse its ban against the export of the 727s.[29] Weeks before it was publicly announced that the 727s would be released, Day told Vesco that they would be released. The FBI agents monitoring the undercover investigation and Brewer, the informant, decided then that there was "fire to all that smoke".[30] If the planes were released improvidently because of improper actions taken by Day at Vesco's behest, then the FBI facilitated a foreign policy blunder that they were entirely unable to prosecute. It appears that there was no consideration of how they might prevent or even whether they should try to prevent the actual release of these planes.

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[20] Id. at 283, 288.

[21] Id., Mar. 30, 1982 Committee Hrg. Tr. 4 (testimony of Day).

[22] Subcommittee Hrg. Tr. 291–92 (testimony of Brewer).

[23] Mar. 29, 1982 Committee Hrg. Tr. 153 (testimony of Day).

[24] Subcommittee Hrg. Tr. 288 (testimony of Brewer); Mar. 30, 1982 Committee Hrg. Tr. 5 (testimony of Day).

[25] Anderson, "Vesco Bid at Jordan, Kirbo", Washington Post, Sept. 11, 1978.

[26] Subcommittee Hrg. Tr. 298 (testimony of Brewer).

[27] Id. at 294–95.

[28] Newsom, supra note 7, at 11.

When the news of the release of the planes became public, Day asked to see Vesco but Vesco said that he could not; he was flying to Libya "to work on the contract." [31]

4. When Day does not get paid, he wants "out"

When Vesco returned, he claimed that the Libyans would not pay him any money for the release of the 727s without confirmation, "a nod" from some American official to some Libyan official that Vesco and his associates were somehow responsible.[32] Although Day suspected that Vesco was actually paid by the Libyans,[33] he "wanted to wash his hands" of the deal because he had spent all the money he intended to spend and had not received any.[34] It was Brewer who told Day not to quit and asked him, "Would you take a partner in it if I got somebody to put up the money?" Day said, "If somebody wants to put up the money, then I'll continue to run this thing." [35]

5. The FBI informant asks Feeney to pay Day money to keep Day "in"

So Brewer made a proposition to James Feeney who belonged to the same London club and with whom he had had some "business dealings." Brewer told Feeney that he could become Day's partner in the Libyan plane deal for $50,000. Feeney said that he was interested.[36] Brewer did not tell Feeney that he was an FBI informant, although Mr. Brewer was not always so discreet about the fact that he was an informant.[37]

Brewer introduced Feeney to Day in January 1979 at New York's Roger Smith Hotel. Day discussed the deal and mentioned that his contacts included not only DNC Chairman White but also Messrs. Jordan and Charles Kirbo, a lawyer and a friend to President Carter.[38] Feeney said that he had one demand: he wanted to meet Vesco. Day agreed that Feeney would meet Vesco provided that Feeney contribute $10,000 "up front." Feeney immediately gave Day a check for $10,000 drawn on the First National Bank of Teheran; there were however insufficient funds in that account.[39]

6. Feeney therefore meets Vesco

Day wanted to question the Libyan representative to the United Nations, Mansur Kikhia, about whether Vesco had been paid and, if not, would he be paid. Vesco arranged that meeting in early 1979.[40] Ambassador Kikhia told Day that there was no "payoff" for the release of the 727s, that there was "no money for airplanes" either in the past or the future.[41] When Day next visited the Bahamas, he asked Vesco to respond. Vesco said, "Ignore him [Kikhia]; I'll get the money from [Major] Jalloud." [42]

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[29] Id.
[30] Subcommittee Hrg. Tr. 295, 301 (testimony of Brewer).
[31] Id. at 301.
[32] Id. at 299–300.
[33] March 30, 1982 Committee Hrg. Tr. 16 (testimony of Day).
[34] March 29, 1982 Committee Hrg. Tr. 173 (testimony of Day).
[35] Id.
[36] March 29, 1982 Committee Hrg. Tr. 21–22 (testimony of James Feeney).
[37] See notes 66–69, infra, and accompanying text.
[38] March 29, 1982 Committee Hrg. Tr. 23 (testimony of Feeney).
[39] Id. at 23, 29; March 29, 1982 Committee Hrg. Tr. 174, 182 (testimony of Day).

Day also took Feeney to meet Vesco who reviewed his agenda about avoiding extradition, the release of the Libyan planes, and a proposed oil deal involving a Bahamian refinery. Vesco struck Feeney as one who wanted "total control".[43]

After Day introduced Feeney to Vesco, he returned Feeney's $10,000 Teheran Bank check telling him, "I couldn't find the [Teheran] bank".[44] Feeney said there's "no problem" with the check but Day insisted, "Well, if there's no problem with it [the check], you can get it changed and give me a check on an American bank." Feeney agreed to do that.[45] Day however found it hard to get money from Feeney. Later Feeney's money shortages became a real problem and Day never did get the full $50,000 that Feeney promised.[46]

7. *Feeney becomes an informant for the Southern District to help them capture Vesco*

Feeney had pled guilty in the Eastern District of New York, was awaiting sentence on those charges, and believed in early 1979 that he was also under investigation by the U.S. Attorney for the Southern District of New York (hereinafter the Southern District) for his questionable banking activities. Feeney, previously indicted and convicted of stock fraud by the Southern District, cooperated once before with that office.[47] Feeney thought that information about Vesco might be worth immunity from further prosecution or, if not immunity, at least some consideration.[48] Upon returning from the Bahamas, Feeney's attorney, Marvin Segal, Esq. called the Southern District to discuss what, if anything, Feeney's cooperation might be worth. Ironically, an FBI informant's introduction to Vesco gave Feeney the opportunity to bargain with the Southern District. The Southern District had no idea that Brewer was cooperating. Feeney told the Southern District of Brewer but it meant nothing to them. In a series of meetings attended by Messrs. Feeney and his attorney, Segal. Assistant U.S. Attorney (hereinafter AUSA) Jed Rakoff, and Criminal Investigator (hereinafter Inv.) Thomas P. Doonan, Feeney told the Southern District that he would try to produce Vesco and at his own expense;[49] Feeney had previously produced another fugitive.[50]

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[40] March 29, 1982 Committee Hrg. Tr. 169 (testimony of Day).

[41] Id. at 170.

[42] Id. at 183; see notes 21–24, supra, and accompanying text.

[43] March 29, 1982 Committee Hrg. Tr. 30 (testimony of Feeney).

[44] Id. at 180, 181 (testimony of Day).

[45] Id. at 180.

[46] Id. at 184.

[47] See Sentencing Minutes, *United States* v. *Feeney*, 78–CR–356 (E.D.N.Y., December 27, 1979) James Feeney, under circumstances described later in the text, see notes 258–323, infra, and accompanying text, was prosecuted and in the course of challenging his conviction testified on May 12, 1980 in Denver, Colorado in the U.S. District Court before the Chief Judge for that district. As described in the preface of this report, Committee staff reviewed testimony and numerous exhibits (hereinafter referred to as Denver Ex.) introduced at trial and hearings (hereinafter referred to as Denver Tr. preceded by the witness' surname and the date of the transcript) including those proceedings conducted and exhibits offered in camera in *United States* v. *Feeney, et al.*, Criminal Action No. 80–Cr.–54 (D. Colo.) (Winner. Chief J.). The testimony given and exhibits offered in camera were obtained by a subpoena duces tecum issued by the Committee and served upon the U.S. District Court. Among the documents in the Committee's possession therefore are more than 60 tapes made during the undercover investigation, corresponding transcripts of those tapes, daily investigative notes by Criminal Investigator (hereinafter referred to as Inv.) Thomas P. Doonan, assigned to the Southern District, the Southern District's request to continue to fund Feeney's undercover efforts, a record of the Department's refusal to fund Feeney and the Department's recommendation not to appoint a Special Prosecutor.

[48] March 29, 1982 Committee Hrg. Tr. 14 (testimony of Feeney).

Notwithstanding Feeney's past accomplishments, his proposal to capture Vesco, then a fugitive for seven years, was greeted most skeptically.[51] AUSA Rakoff told Feeney that if he produced Vesco, then the U.S. Attorney's Office would consider a written agreement conferring immunity.[52]

The Southern District's skepticism evaporated shortly afterwards when Feeney produced a cup that Vesco had purportedly handled. The Southern District forwarded the cup to the FBI for analysis. The FBI confirmed that the fingerprints were indeed Vesco's. Feeney said that after the FBI report, "the investigation took a decided turn in a positive direction."[53] Feeney's sentence in the Eastern District of New York was repeatedly adjourned pending an evaluation of his cooperation with the Southern District.[54] Feeney thereafter informed on Brewer, the FBI informant, who made it possible for Feeney to cooperate with the Southern District.

8. *In early 1979, there are embarrassing news stories about Libya, embarrassing to President Carter*

In early 1979, Libya remained in the news and the news was bad. Unfortunately, the President's brother, Billy Carter, was a part of that bad news. Billy Carter told a reporter that Libya had a poor image only because "the Jewish media tears up the Arab countries full time" and that "There's a hell of a lot more Arabs then there is [sic] Jews." Carter's remarks were only further compounded by urinating on the runway apron at the Atlanta airport while waiting for a delegation from Libya. President Carter dissociated himself from any remarks by his brother that might "be interpreted as being anti-semitic."[55]

9. *According to Day, DNC Chairman White complains to Libya about the stories and asks about Libya's planes*

When Day spoke to White in early 1979 he claimed that White told him that "one of the things that the Administration wanted conveyed [to the Libyans] were [sic] handling the situation with the President's brother;" White denied that he had such a conversation.[56]

Day nevertheless said that he believed that White spoke for the Administration and therefore transmitted what he understood to be the Administration's concerns to Ambassador Kikhia.[57] Day said that he also asked White to determine the status of the 747s, not yet released.[58] According to Day, White said he would inquire whether they would be released and, if so, when.[59]

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[49] Id.

[50] Mr. Feeney had lured fugitive D'Onofrio, indicted in a Southern District stock fraud case, to Switzerland where he avoided extradition, then to London where he agreed to return to the United States. Segal. Oct. 6, 1980, Denver Tr. 6.

[51] March 29, 1982 Committee Hrg. Tr. 14 (testimony of Feeney).

[52] Segal. Oct. 6, 1980, Denver Tr. 10–12; Feeney, May 12, 1980, Denver Tr. 23–24; Mar. 29, 1982 Committee Hrg. Tr. 15–16.

[53] March 29, 1982 Committee Hrg. Tr. 17 (testimony of Feeney).

[54] See Sentencing Minutes of James Feeney, Dec. 27, 1979 in *United States* v. *Feeney*, 78 Cr. 356 (E.D.N.Y.) (G.C.P.).

[55] "Carter Acts to Dissociate Himself From Brother's Role With Libya," New York Times, Jan. 12, 1979, at A 1.

[56] March 29, 1982 Committee Hrg. Tr. 176 (testimony of Day).

[57] Id.

10. The State Department decides to release the 747s

There is no evidence that White contacted anybody at the State Department at Day's behest before April 1979 but there nevertheless was a decision by the State Department, notwithstanding Billy Carter's bad press and the President's response, to reverse its ban against exporting 747s to Libya.

The decision to release the 747s became public at authorization hearings conducted by the Senate Foreign Relations Committee on March 2, 1979. Morris Draper, the Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs appeared.[60]

Senator Stone asked him: "Are you considering any sales of major aircraft to Libya?" Mr. Draper answered, "One major aircraft manufacturer *has hopes* of selling substantial quantities of civil aircraft to Libya, so I am aware in a general way *some company hopes*. We did approve the sale of 727 aircraft to Libyan Airlines" (emphasis supplied).

Several questions later, Senator Stone asked, "Are you considering the sale to Libya of larger jets than 727s?" Draper said, "We *do not* have *formal requests*. And while we are aware of the *hopes of companies* for certain sales, I think it is *really unfair to mention* them specifically because of competition (emphasis supplied)". Senator Stone sharply disagreed that it was unfair to "mention" them since the sales involved the 747 jumbo jet with "both troop transport and some military cargo transport capabilities" in "an area of extreme sensitivity in the Middle East." Senator Stone thanked the Chairman and yielded.

A remark from a staff member caused Senator Stone to question Mr. Draper further about the fact that there had been no "formal requests" of the State Department and only "hopes" that 747s would be sold to Libya. Senator Stone said, "I am afraid I have one further question on this. You said you approved two 727s for Libya." Draper said, "Yes, Sir." Senator Stone said, "And you said you denied or didn't know of any larger sales. But I am advised by a staff member that the State Department has approved the sale of two 747s." Mr. Draper said, "*Let's correct the record.* We have approved the sale of two 727s (emphasis supplied)". Senator Stone said, "I understand that but I am advised that you have also approved the sale of two 747s." Despite his earlier testimony, Mr. Draper said, "That's correct. We approved the sale of three 747s." Mr. Draper continued, "I am sorry for *unintentionally misleading* you in my answer to your earlier question. The record is three 747s (emphasis supplied)."

Thus, the State Department disclosed that the ban against the export of 747s to Libya had been rescinded.

The timing of Mr. Draper's disclosure could not have been worse. Three days after he testified, according to Mr. Newsom and news accounts, Libya reportedly flew about 1500 Libyan troops and tons of war materiel to Entebbe to help Idi Amin of Uganda stave off attacks by anti-Amin Ugandan rebels and Tanzanian regulars.[61] According to Newsom, the planes used in this airlift to Entebbe were C–130s and 727s.[62] Mr. Newsom said that there was no evidence that the 727s used in the airlift were the same ones he agreed to release on Libya's assurance they "would not be used for military purposes." [63]

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[58] Id. at 178.

[59] Id. at 179.

[60] Hearings concerning the Fiscal Year 1980 International Security Authorization before the Committee on Foreign Relations, 96th Congress, 1st session 167–168 (testimony of Morris Draper, Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs) [hereinafter referred to as Foreign Relations Committee Hrg.].

11. The FBI and the Southern District discover each other's informant

While the Libyans were using 727s in Uganda, the FBI and the Southern District were discovering each other's informant. In March 1979, the FBI asked the Southern District where it got a cup with Vesco's fingerprints. The Southern District refused to say.[64]

In the latter part of March, Philip Heymann, then Assistant Attorney General for the Justice Department's Criminal Division summoned AUSAs Rakoff and Martin McNamara, assigned to handle the case in the Southern District, to the Main Justice Department Building in Washington, D.C. to confer. Also present were Irv Nathan (Mr. Heymann's Deputy Assistant), Tom Henderson (the Chief for the Department's Public Integrity Section) and Inv. Doonan of the Southern District. Mr. Heymann learned that Feeney was a Southern District informant. Inv. Doonan learned that Brewer was an FBI informant. Neither informant knew the other was cooperating. And it was agreed they would not be told.[65]

12. Day knew that Brewer was an FBI informant

Although the Southern District did not know that Brewer was an informant, Day—the target of the investigation—did know. Brewer had been indiscreet. Alex Phillips had been Brewer's friend for "a long time". Brewer knew Phillips was Day's friend. Brewer nevertheless told Phillips that he was an FBI informant and Phillips overheard Brewer telling the FBI what was happening in the Libyan plane investigation. Phillips told Day, his friend.[66] Upon learning, Day said, "Are you kidding me?" Phillips said, "No, Jimmy and I don't want to see you get hurt." [67] Day did not divorce himself from Brewer because he thought that the payoff was close and that he could outsmart Brewer.[68] What Day says he did not know and never suspected was that Feeney was an informant. [69]

13. Day tells Feeney, the Southern District informant, that "everything is still on course"

By March, Feeney still owed Day money. That is why Day and Wohlenhaus came to New York, to get money from Feeney; Michael Lazar, an attorney, was supposed to give Day a check for several thousand dollars. Feeney was supposed to advise the Southern District how things were progressing and he wore a concealed nagra tape recorder to help him. They met at a mid-town New York restaurant before going to Lazar's office. Brewer did not attend that meeting.

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[61] Newsom, supra note 7, at 11 ; see John White's deposition of May 14, 1982 [hereinafter referred to as White Dep. Tr. —], specifically Exhibit 22 [hereinafter referred to as White Dep. Ex. —].

[62] Newsom, supra note 7, at 11.

[63] Id. See notes 28–30, supra, and accompanying text.

[64] Inv. Doonan, Oct. 2, 1980, Denver Tr. 42.

[65] Id. at 44–45.

[66] Subcommittee Hearing Transcript 304 ; Mar. 29, 1982 Committee Hrg. Tr. 163 (testimony of Day) ; Denver Ex., Inv. Doonan's "Memorandum of Meeting With Alex Phillips, AUSA Levites, S/A Lormel." dated Jan. 9, 1980.

[67] March 29, 1982 Committee Hrg. Tr. 163 (testimony of Day).

[68] Id. at 169.

[69] Id. at 175.

a. Feeney has a check for Day.—Once seated, Feeney told Day that Lazar would probably give him a check and Day said: "as long as it's cashable [sic] on a New York bank", in a thinly veiled reference to Feeney's Teheran Bank check.[70]

b. Day and Wohlenhaus reassure Feeney.—Feeney commented that Billy Carter had been "put in his place." Day said, "I told you that." Wohlenhaus said, "They took him [Billy Carter] out of circulation and used the excuse that everything [he said] was said out of [his] alcoholic addiction [sic]."[71] Day assured Feeney that Billy Carter is "not involved *now*" (emphasis supplied). Feeney wanted to know if White had "that kind of power". Day asked Feeney if he was familiar with White's "title at the . . . head of this piece of [DNC] stationery" brandishing the letterhead for Feeney to read. Wohlenhaus added that White raises "every nickel" of Democratic campaign funds himself.[72] Day reminded Feeney, "In six weeks [after talking to Vesco] I [sic] got the first one [the Boeing 727] released." Wohlenhaus told Feeney that "the [seven] forty sevens have already crossed the pond [the Atlantic Ocean]".[73] Day remarked that even though Libya supported Uganda, "They [the Libyans] still got their [expletive deleted] airplanes."[74] Thus, Day assured Feeney that "everything is still on course". Day said he would receive a call "in the latter part of the week from . . . a gentleman right here in this town", referring to the Libyan Representative Kikhia.[75]

Feeney nevertheless asked Day how he could trust Day. Day said that after Feeney asked to meet Vesco, he got it.[76] Day said, "I'll always do what I said I do".[77] Day told Feeney that if it ever became necessary, White himself would reassure Feeney. Day described how. Feeney would have a lunch with White. At that lunch, White would say:

> Ah but you know I've always thought the Bahamas were one of the most beautiful places in the world. It's a very rich area. If a person does his business right down there, they can make a lot of money.

Wohlenhaus said that Day would "tell you [Feeney] the day before what he [White] is gonna say to acknowledge what you want to hear."[78]

c. Feeney tells Day that there may be a leak: FBI informant Brewer.—Feeney told Day that he was afraid that there was a leak and that Brewer, for one, spoke too freely. Feeney asked Day how to

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[70] As earlier mentioned, supra note 47, the Committee obtained copies of the recordings made in this undercover investigation. Denver Ex. 49A is the tape of the March 19 meeting of Feeney, Day, Wohlenhaus and Lazar. In some instances, the Southern District has supplanted transcripts of the tapes introduced in *United States* v. *Feeney* in Denver with full transcripts and made them available to this Committee [hereinafer referred to as S.D.N.Y. Tape Tr. preceded by the date of the meeting]. The Southern District supplied the Committee with a final transcript of the March 19 meeting. March 19, 1980, S.D.N.Y. Tape Tr.

[71] March 19, 1979 S.D.N.Y. Tape Tr. 30.

[72] Id. at 33.

[73] Id. at 38.

[74] Id. at 70.

[75] Id. at 15.

[76] Id. at 34.

[77] Id. at 47.

[78] Id. at 49.

"keep that lid on it." Day told him that if it comes up, "You just deny it". To anybody who declared that such a thing is actually happening, you protest: "Them [sic] people must be on dope".[79]

d. Wohlenhaus says Vesco's extradition request is not a problem.—Wohlenhaus told Feeney that Vesco's extradition was not a big problem because "they [the Administration] want to get rid of him as bad[ly] as he [Vesco] wants them to let him go." [80] Day said however, "We don't ever tell him that." [81] After lunch, they left to pick up the check from Lazar.

14. The FBI and the Southern District agree to "coordinate"

In early April 1979, a meeting of the U.S. Attorney's Office for the Southern District of New York and the FBI was convened at the Justice Department in Washington, D.C.[82] According to Doonan, the meeting's purpose was for the parties to inform each other of the separate investigations and "to coordinate [both] our investigation[s]." Doonan said, "There were [nevertheless] many things that . . . the FBI did [afterwards] that we [the Southern District] were not aware of." [83] After that meeting, AUSA McNamara told Feeney that they were going to divert their attention from Vesco to White.[84]

15. The FBI and the Southern District both tape the same meeting on April 11, 1979

The first significant meeting after the FBI and the Southern District agreed to coordinate their investigations was scheduled for April 11, 1979 for Day, a Vesco representative and a Libyan representative. Feeney knew about the meeting but was not invited to it. Nor was Brewer. Day however asked to see Feeney and Wohlenhaus before meeting with the Vesco representative. Brewer was invited to that meeting.[85]

AUSA McNamara wrote a letter to Mr. Nathan, Heymann's Deputy, confirming that the Department gave the Southern District permission on that day for Feeney to record the meeting.[86] At 9:35 a.m. on April 11, Inv. Doonan hid a nagra recorder on Mr. Feeney. Although Feeney was already wearing one recorder, with the risk that it might be discovered, the FBI concealed a second nagra recorder in informant Brewer's briefcase, thereby increasing the risk.[87] Although the FBI and Southern District knew of each other's informants and their investigations were supposedly being "coordinated", in fact the FBI surveillance report showed that the FBI did not know who Feeney was. The FBI report said that an FBI Agent saw "an *unknown* white male" and described Feeney's physical characteristics. The report said that the "unknown white male" was "*believed to be* James Feeney (emphasis supplied)."[88]

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[79] Id. at 42, 44.

[80] Id. at 40.

[81] Id.

[82] Doonan, Oct. 2, 1980, Denver Tr. 48.

[83] Id. at 49–50.

[84] March 29, 1982, Committee Hrg. Tr. 43.

[85] Id. at 49.

[86] Denver Exs. AUSA McNamara's letter to Irv Nathan, Deputy Assistant Attorney General re request for permission to make consent recording. dated April 11, 1979.

[87] Denver Exs. FBI report form 302, File No. 194–69 [hereinafter referred to as FBI 302] Report of Investigation on Apr. 11, 1979 by S/A Lormel et al.

The preliminary meeting nevertheless occurred. Feeney met with Day and Wohlenhaus in Peacock Alley at the Waldorf Astoria and then joined Brewer at a room in the hotel. At this meeting Day said that "Blanco", as Mr. White was called, was "having Hamilton [Jordan], [Charles] Kirbo . . . to do this thing [involving the planes]". Day said that "V [for Vesco] knows [that] it's not a rip-off because the 727s were released [in 1978]." Wohlenhaus said that a meeting had been set up for that day at 3:00 p.m. with a man "next to Qaddafi". The Libyans planned to release $250,000 a day for 11 days totalling $2,750,000 and that "Blanco" would get $1 million of that first installment. Day reviewed again Vesco's proposal to return and testify and concluded, "They do not want him in this country. Never." Day and Feeney left the meeting.[89]

16. The FBI follows Day from that meeting to D.C. where Alex Phillips poses as White

The FBI agents reported that Day and Feeney left the Waldorf at about 1:05 p.m. FBI agents reported that they saw them leave the hotel and that Feeney went uptown. They reported that Day took a cab to LaGuardia Airport to catch an Eastern Shuttle to Washington, D.C. According to the FBI report, Day was followed.[90] At National Airport, Day met Alex Phillips who originally told Day that Brewer was an FBI informant. White and Phillips met Vesco's representative at the Washington Hotel; Phillips posed as John White and left the meeting after about 15 minutes.[91] The FBI monitored that meeting.[92] Day did not say whether he had Phillips pose as White to outsmart Brewer and the FBI, presuming he suspected they would do what they did, namely, follow him. Day testified that he had Phillips pose as White to see "if I was getting in the [same] position that he [Vesco] was trying to put [Spencer] Lee [IV] in", referring to Vesco's disclosures to columnist Jack Anderson in the Fall of 1978.[93]

17. About 1 week later, Day actually does meet DNC Chairman White

On April 18, 1979, exactly one week after meeting with the White pretender, Day really did meet Mr. White. The meeting at DNC Headquarters was not attended or observed by either the Southern District or the FBI. There are therefore no tapes of the meeting. Other than "the Chairman's Schedule" stating that White met Day, there is no record of that meeting.[94] Thus, there is a dispute about what was said at that meeting. There is however no dispute about what Mr. White did after that meeting.

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[88] Id.

[89] Denver Ex. 50A, undercover nagra recording of Apr. 11, 1979 meeting.

[90] FBI 302, report of investigation on Apr. 11, 1979.

[91] Denver Exs., Inv. Doonan's Memorandum of Interview of Alex Phillips, dated January 1980.

[92] AUSA Raymond Levites, Apr. 8, 1981, Denver Tr. 561.

[93] Mar. 30, 1982, Committee Hg. Tr. 30.

[94] The "Chairman's Schedule" for Apr. 18, 1979 was among the documents including telephone logs and schedules made available to the Committee by Mr. White. During Mr. White's deposition of May 14, 1982 [hereinafter referred to as White Dep. Tr. —], a number of the documents produced by Mr. White were marked as Exhibits [hereinafter referred to as White Dep. Ex. —]. The schedule referred to in text was marked as White Dep. — Ex. 10.

18. White makes at least three calls to the State Department

On April 19, 1979, White called Richard Moose, Assistant Secretary for African Affairs but did not reach him.[95] Moose returned the call. White asked Moose about the feasibility of the Libyan Ambassador meeting President Carter, what the State Department's and the Administration's views were regarding such a meeting, and how to arrange such a meeting. Mr. Moose told White that his proposal was "off the wall", that Libyan affairs were not his responsibility, and that Harold Saunders would be responsible.[96] On April 19, Mr. White called Warren Christopher, Deputy Secretary of State; there is a phone log entry reflecting that call.[97] In a third call, Mr. White discussed the "status of the planes" with Undersecretary Newsom, who reversed the State Department ban and released the 727s to Libya in 1978 on Libya's written assurance that they would not be used for military purposes; there is no phone log entry for the Newsom call.[98]

19. Vesco asks Day for a status report and tapes that conversation

On April 23, Vesco asked Day what was happening and, perhaps because Vesco discovered that Day used a White pretender, recorded the conversation; Vesco gave the tape of that conversation to this Committee.

In that conversation, Vesco asked Day about the status of his own "problem", received the customary assurances, and then discussed Libya's embargoed planes, Vesco's opinion was that the Libyans had "started a war and it [releasing the 747s] can't be done right now".[99] Vesco said, "[Secretary] Vance sent a letter to Carter, is that right, saying that he [Vance] recommended that he [the President] stop the shipment of 747s?" Day said, "That's correct because they've got a protest [at the State Department] from Sadat and mainly because he [Qaddafi] is just causing trouble everywhere."[100] Day said that President Carter knew that "White went through a friend [unspecified] to resolve *a problem* that [Charles] Kirbo and Ham[ilton] Jordan got into" (emphasis supplied). Vesco then asked Day if the "Kirbo-Jordan" problem was "the starting point of Carter's knowledge of White's contacts with me" [Vesco]. Day said, "Yes."[101] Vesco asked, "But how did it swing into Libya? That's what I'm trying to get at." Day said that White reported to President Carter and Hamilton Jordan that the release of the planes was a "gesture of their good faith in those places."[102] Vesco asked whether "White related this to Hamilton Jordan [as] to why he was helping the Libyans." Day answered, "Right".[103] Day said that White "to a certain extent kept Carter informed on part of it and lied to him [about other matters]". Vesco asked, "He just hadn't told him all of it?" Day said, "That's right."[104] Vesco asked Day whether President Carter "knew of White's [financial] interests" in the release of the Libyan planes. Day said, "Yes".[105]

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[95] On August 5 and October 10, 1980, AUSA Raymond Levites disclosed to Mr. White evidence that the Southern District had developed during the investigation. AUSA Levites told Mr. White what the Southern District learned from Mr. Richard Moose, Assistant Secretary for African Affairs, Warren Christopher, Deputy Secretary and David Newsom, Undersecretary for Political Affairs. The Aug. 5, 1980 interview was memorialized in a memorandum. See generally, Doonan's notes of meeting with Mr. White dated Aug. 5, 1980. The October 10, 1980 interview of Mr. White was taped. Mr. Stuart Pierson, White's counsel, who had a copy of the tape, made it available to the Committee. Mr. Pierson stated that the Committee could make "whatever written notes it wished." John P. Flannery, II, Special Counsel to the Committee, made a verbatim transcript of the tape. That transcript is included in an affidavit by Mr. Flannery, sworn to May 13, 1982 [hereinafter referred to as Flannery Aff. —] and made a part of this record. For the circumstances surrounding White's call to Moose, see Flannery Aff. 40–41.

[96] Mr. Saunders, then Assistant Secretary for Near Eastern and South Asian Affairs, had apparently replaced Mr. Draper who testified before the Senate Foreign Relations Committee a month earlier.

[97] Denver Exs., Inv. Doonan Memorandum of meeting of DNC Chairman White, et al, dated Aug. 5, 1980 at 2–3; Flannery Aff. 19–51.

[98] See notes 28–31, 96 and 97, supra, and the accompanying text.

[99] Subcommittee Hrg. Tr. 192.

[100] Id. at 187.

[101] Id. at 188.

20. The State Department suspends the release of the 747s

In early May, the State Department advised the Senate Foreign Relations Committee by phone that "The previous decision on [releasing the] 747 planes to Libya is under review in the Department of State."[106]

21. The FBI commences an undercover investigation against the Southern District informant

Day, Wohlenhaus and Feeney flew to the Bahamas and saw Vesco in late April and again in early May. On both trips, special agent (hereinafter S/A) Witkowski, the FBI Agent to whom Brewer reported, accompanied Brewer.[107] On one trip, Brewer dined with Anthony Cavanaugh and told Cavanaugh that S/A Witkowski was a "laundryman, one who washes money". Brewer also told Cavanaugh about Feeney but Cavanaugh did not testify about what was said. After dinner, Brewer introduced Cavanaugh to S/A Witkowski. Cavanaugh also met Feeney. He asked Feeney to negotiate a check.[108]

On May 10 or 11, in New York, Brewer introduced Cavanaugh and Mr. Carrano to Feeney so that Cavanaugh could "wash some cash from Denver" by exchanging it for "some paper" that they expected Feeney would supply.

The FBI knew that Feeney was cooperating. It knew that Feeney had just paid $2.500 to Day but that he needed more money to meet his obligations to Day.[109] They nevertheless began an undercover investigation of Feeney. Brewer's arranged meeting of Cavanaugh and Feeney was the first overt act in that investigation. Ironically, Feeney's association with Cavanaugh, begun under FBI supervision, in part because Feeney needed money for the Vesco investigation, would later be cited by the FBI to deny the Southern District's request to give funds to Feeney.[110] Worse for Feeney, Cavanaugh would ultimately cooperate, thereby facilitate the indictment of Feeney, and finally testify against him in Denver. But that comes later.[111]

22. Libyan Ambassador meets with Day, instead of Vesco; half of those at the meeting report to the FBI or the Southern District; no one tapes the meeting

In the meantime, Ambassador Kikhia agreed to a meeting with Day for May 20 in Houston, Texas because he was dissatisfied with Vesco and wanted to know what alternative Day proposed. Kikhia met with Day, Wohlenhaus, Feeney, Brewer and Wise, that is, S/A Witkowski, at the Woodland's Inn and Country Club. Half of the people at this meeting were reporting to the FBI or the Southern District. Both the FBI and the Southern District filed surveillance reports of the meeting. Neither Brewer, S/A Witkowski or Feeney wore a concealed recording device. Despite all the tapes made in this investigation, at what was presumably a critical turn by the Libyans from Vesco to Day, no recording was made of this meeting. Presumably the FBI and the Southern District each believed that the other was taping the meeting.[112]

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[102] Id.
[103] Id. at 189.
[104] Id. at 188.
[105] Id. at 187.
[106] Foreign Relations Committee Hrg. 168.
[107] Subcommittee Hrg. Tr. 196.
[108] Anthony Cavanaugh, June 30, 1980, Denv. Tr. 59, 60, 61, and 69.
[109] Id. at 63–64; Subcommittee Hrg. Tr. 196.
[110] See notes 215–228, infra, and the accompanying text.
[111] See notes 258–323, infra, and the accompanying text.

a. Kikhia discusses a $15 million proposal alone with Day.—According to S/A Witkowski's report, Day first met alone with Kikhia. Day later said that in private he furnished Kikhia with names, telephone numbers and a $15 million proposal to have the State Department release the embargoed Libyan planes; that Day requested of Libya $7.5 million for each 747 released; that Kikhia countered with a $10 million proposal for both 747s; that Day rejected Kikhia's counter offer; and that Day agreed, in addition to seeking to lift the ban on the embargoed planes, to be Libya's lobbyist for three years.[113]

b. Kikhia does not want to deal with Vesco.—When Day and Kikhia concluded their private meeting, Kikhia told all present that he had met Vesco several times but did not wish to have any further dealings with him, among other reasons, because Vesco spoke too freely on the phone with no other purpose but to embarrass the Democratic party and Kikhia believed his phone was tapped.[114]

c. Kikhia to recommend Day's proposal.—Kikhia said that he was favorably impressed with Day's proposal and that he would recommend it to his superiors in Libya. He cautioned that he cannot make the final decision himself but that his recommendations are highly regarded. He said it would take about three weeks, until June 11, for his superiors to respond.[115]

23. Feeney tells Vesco of the Kikhia meeting and the State Department reimposes the ban on the 747s

Several days later, Feeney advised Vesco aide Norman LeBlanc in a taped telephone conversation that he had met Kikhia the preceding weekend and learned that Vesco was "no longer involved in this thing at all" and that it was "because of his [Vesco's] own [extradition] situation that the thing [about the Libyan planes] has been held up as long as it has." LeBlanc asked what had been held up? Feeney said "the sale of the birds".[116] Thus, Feeney kept Vesco apprised of what was happening.

On May 25, 1979, LeBlanc asked Feeney how Day's credibility held up after the State Department announced that the 747s would not be released. Feeney said there had been a ban before, it had been lifted before, and it could be lifted again.[117]

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[112] FBI 302, report of investigation of May 20, 1979 by S/A Witkowski [hereinafter referred to as May 30, FBI 302]. Denver Ex. 736, Inv. Doonan's investigative notes, dated May 20, 1979.

[113] May 30, FBI 302.

[114] Id.

[115] Id.

[116] Denver Ex. 18A, transcript of taped telephone conversation of Feeney-LeBlanc, dated May 23, 1979, at 2.

[117] Denver Ex. 19A, transcript of taped telephone conversation of Feeney-LeBlanc, dated May 25, 1979, at 2–3.

24. The Libyan Ambassador asks to meet White

On June 11, Day Wohlenhaus, and Feeney visited Kikhia at his offices at 866 United Nations Plaza to see what Kikhia's superiors thought about Day's proposal. FBI informant Brewer did not attend that meeting.

AUSA McNamara again obtained permission for Feeney to wear a hidden nagra recorder that day [118] and according to the FBI reports, there was surveillance for that meeting.[119]

a. Vesco wants to be included.—At the meeting. Ambassador Kikhia told Day and the others that he had not received an answer from his superiors: he expected one by July. Feeney told Kikhia that Vesco did not want to be excluded. that he wanted to be involved in the airplanes and was "still ready, willing and able to be of whatever assistance he can be." [120]

b. Kikhia sets meeting with White for June 18 or 20, but not at White's Office.—Kikhia explained, "I think the problem is a problem of credibility." [121] Day said that he thought they had "a fresh start" at their recent Houston meeting [122] and asked him, "What do you feel that your people need to know that you're dealing with the right people." Kikhia started by saying, "the opportunity to share" and then interrupted himself to say, "you [Day] are not taping this conversation." Day assured him, "Oh, no I have no tape." Feeney, who was taping the conversation, remained silent.[123]

Kikhia resumed, "I want when you tell me something to believe in it." [124] Day said that for a long time Kikhia and he had not had "direct communications." Day explained, "I was listening to Bob [Vesco]" and he said something different than "when you [Ambassador Kikhia] and I [Day] finally sat down in Houston, Texas." Day said, "From that time [in Houston] I told you that our relations would be on a person to person basis." [125] Day said that he was "running this operation" and was "prepared to move forward exactly on the lines that I discussed with you with no variations, and simply upon your government giving you the green light, and of course, that I cannot accomplish." [126] Kikhia said he had full authority to discuss the matters with anyone in the United States Government.[127]

Day asked when the Ambassador could meet with Mr. White in the following week.[128] Day explained past delays by stating that "Bob [Vesco] caused the problem with this, with the Ambassador not meeting Mr. White, simply because he's [White] not going to meet with those [Vesco's] people." [129] Day suggested however that for Kikhia he could arrange a meeting at White's office. He said, "I can set up [the meeting with White] either on Tuesday, Wednesday, or Thursday of next week." [130]

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[118] Denver Exs., AUSA McNamara letter to Deputy Assistant Attorney General Irv Nathan re request for permission to make consent recording. dated June 11, 1979.

[119] FBI 302 Report of Investigation on June 11, 1979 by S/A Lormel et al.

[120] Denver Ex. 52A, transcript of taped meeting of Ambassador Kikhia et al. on June 11, 1979, at 15–17.

[121] Id. at 17.

[122] Id. at 18.

[123] Id. at 19.

[124] Id.

[125] Id. at 20.

[126] Id. at 21.

[127] Id. at 22.

[128] Id. at 23.

[129] Id. at 24.

[130] Id. at 24–25.

As for the location, Kikhia asked, "Can we, can we avoid meeting him in the office?" [131] Day said that the only reason "that I suggested the [DNC] office [is] so that you would know that the person [Mr. White] you're meeting is totally real, that I'm willing to take you to his office, so you can know that . . ." Kikhia interrupted, "He [Mr. White] knows who he is, I believe." Kikhia asked instead that Day "arrange for dinner, for example, in Washington." [132]

Day asked when he would be available.[133] Kikhia and Day agreed it would be Monday, the 18th, or Wednesday, the 20th, and Day would confirm the appointment.[134] Day cautioned that Monday is bad for Mr. White because his policy committee meets then.[135]

c. Day wants only Kikhia, White and himself at the meeting.—Day said that when Kikhia and White met, he would be the only other person present.[136] Kikhia added,

> And the Chargé d'Affaires.

Day said,

> I've got to clear that. I can't just. I'm not going to lie to you. I've got to clear that. I have the authority to say he will meet you anywhere, even in his office if you want, but to, to, to . . . I would prefer that it not be . . .

Kikhia interrupted;

> To faciliate more (unintelligible) my country . . .

Day said,

> But if it takes that to get this done, Mr. Ambassador, I will try to include him.

Kikhia said it would help to include him because

> He's in the picture.[137]

d. Day explains that Vesco talks to the press.—Day explained again that "the meeting for you is not a problem. The meeting with Bob's people has always been my problem". By way of explanation, Day said, "Some people contacted Bob [Vesco] in sincerity. Bob then used some information that they, in sincerity, you know what I mean, was [sic] trying to help him, by turning the information over to [columnist] Jack Anderson." [138] Day assured Kikhia that although Vesco had "done it once [gave a story to Anderson]; he's not going to have the opportunity to do it to them again." [139] Day nevertheless said that "At a point in time, they [the Administration] will do these things [that Vesco wants] because they just want to get him out of the picture." [140]

e. Day says that Ambassador Kikhia has agreed to modify the C-130s for agricultural use.—About the planes, Day said that he was "told in Washington [he did not say by whom] to either take this thing over personally, to handle it personally, or walk away from it. And that is exactly what I've done." [141] There was some discussion about when the 747s would be ready for delivery ."Probably next year [1980]".[142] In response to a question by Feeney, Day said that Ambassador Kikhia agreed to "agriculture modifications" to the C–130s as an alternative to their usual military application.[143]

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[131] Id. at 25.
[132] Id.
[133] Id.
[134] Id. at 26.
[135] Id. at 33.
[136] Id.
[137] Id. at 27.
[138] Id.
[139] Id. at 28.
[140] Id.
[141] Id. at 29.

On June 11, at about 7:45 p.m., Feeney advised Inv. Doonan that the meeting with White was set for Wednesday, June 20, 1979 and that "he [Feeney] is invited."[144]

25. Can the C–130 be modified?

In the course of this investigation, one question that persists past its first mention by Day at the June 11 meeting is, "Can C–130s be used for Agricultural purposes?"

a. The Department of Agriculture used C–130s for an agricultural purpose, to fight fires.—This Committee found that not only could C–130s be used for that purpose but that they had been used for such a purpose by the Department of Agriculture since 1973. As the C–130 has a large cargo hauling capacity and the ability to maneuver in and out of restricted airfields, a spray system to spray flame retardant on fires, designed by the Food Machinery Corporation (hereinafter FMC) of San Jose, California, was installed in the C–130s. Five 600 gallon storage tanks containing flame retardants, a pinkish fluid, were loaded in the C–130s cargo compartment; they rested on pallets. Two parallel discharge tubes were connected to the tanks. Compressors regulated the spray of this pinkish fluid out of tubes lowered out of the rear of the aircraft permitting the C–130s to spray trees with retardant. This fire-fighting system was still in effect at the Department of Agriculture in 1977 when Mr. White was Deputy Secretary.[145]

b. During Mr. White's deposition, he stated that he saw C–130s spray fires but claimed he did not know they were C–130s.—During Mr. White's deposition he was asked the following questions about that spray system and gave the responses indicated:

> *Question.* You are saying under no circumstances could you convert [the C–130] to spray anything. Is that your testimony?
>
> Answer. Well, I am not saying, you know, under no circumstances. That is a rather broad statement. I would just say that it would be *very unusual* and *hilarious* to say that you could use a C–130 for a spray plane. Now there may be other spraying devices that you could use with a cumbersome piece of equipment like that, but *I don't know of any.*"
>
> * * * * * * *
>
> *Question.* Do you know anything about the operating characteristics of a C–130?
>
> Answer. No.
>
> *Question.* You don't know whether—
>
> Answer. *I've seen them.* I don't know [about their operating characteristics].
>
> * * * * * * *
>
> *Question.* Did the Department of Agriculture use any planes for fighting forest fires?
>
> Answer. The United States Department of Agriculture, yes.
>
> *Question.* Did they use anything like C–130s?
>
> Answer. *I don't think so. I don't know.* I have only seen one operation [in 1977 in California]. The plane that I was flying in was a small airplane . . . [and in a succeeding answer he continued] . . . we flew to the site of one fire and observed the plane [fighting the fire] making a couple of passes. But we

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[142] Id. at 30.

[143] Id. at 31.

[144] Denver Ex. 73, Inv. Doonan's notes dated June 11, 1979.

[145] Interview of William Munro, Aviation Planning, Forest Service, Department of Agriculture, dated May 11, 1982 by Special Counsel, John P. Flannery II and Margie Bachman, Research Assistant.

> were such a distance that I wouldn't—and I'm not an expert on airplanes. *I wouldn't know whether it was,* what kind of plane it was. (Emphasis supplied).[146]

Upon directing Mr. White's attention to White Dep. Ex. 40, a color photo of the C–130 spraying a fire with the pink flame retardant and asking him if he could identify anything in the photograph, he said, "That looks like the kind of stuff that—" and did not finish the sentence. He was asked, "What kind of stuff?" And Mr. White answered, "The pink cloud. I mean, I remember seeing it—".[147]

26. David Newsom discusses the release of Libya's planes

Three days before White was scheduled to meet Kikhia, Mr. Newsom met Major Jalloud, Colonel Qaddafi's deputy in Tripoli.[148] Mr. Newsom reportedly said that he went to Tripoli "to find out what the Libyans were thinking and whether there were ways to reestablish healthy relations." [149] He reported that "the Libyans complained about the U.S.'s refusal to sell three 747s and the Libyans maintained that they were being unfairly discriminated against on the issue of the [C–130] transport planes." [150]

27. Ambassador Kikhia meets Chairman White

The meeting between Libyan Ambassador Kikhia and Chairman White went ahead as planned on June 20.

Earlier that day, Day visited White at DNC Headquarters; White's schedule again reflects the meeting. Afterwards, Day told Feeney that it was set for 6:00 p.m. at the Washington Hotel. Day said that he intended to pick up Kikhia at 5:00 p.m. and bring him to the hotel. Day said he would be the third person at the meeting; there would be no others. Wohlenhaus, Brewer and Feeney would be permitted to watch from another table.[151]

a. While waiting, Wohlenhaus states that the Ambassador picked the time and the place.—Feeney wore a hidden nagra recorder to the Washington Hotel's Sky Top restaurant that night.[152] Feeney waited with Wohlenhaus for Day and Kikhia. While they were waiting, Wohlenhaus told Feeney that White has a "friendship" or "working relationship" with some of Brewer's people that Wohlenhaus met.[153] He said that White "wants to bring Brewer [unintelligible] with us" because Brewer knows someone with a "reputation for dealing in pay-off money and hot money and doing a good job of it." [154] Wohlenhaus said that what interested White was that Brewer's person had an office in the Caymans; that would mean that after the money is moved around "eventually it will be in the Caymans where he [White] can have easy access to it." [155]

Wohlenhaus told Feeney that Ambassador Kikhia made it clear on June 11, what had to happen "if he was gonna [sic] make some kind of commitment." He had to "talk to him [White] personally."[156] Feeney observed that Kikhia was "picking the time and place."[157]

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[146] White Dep. Tr. 131–134.

[147] White Dep. Tr. 136.

[148] Newsom, supra, note 7, at 12.

[149] R. Shaplen, "Profiles—David Dunlop Newsom: Eye of the Storm—I", New Yorker, June 2, 1980, at 75.

[150] Id. at 77.

[151] Denver Ex. D–73, Inv. Doonan's notes of June 20, 1979.

[152] Id.

[153] Denver Ex. 53, nagra recording of June 20, 1979 meeting; June 20, 1979 S.D.N.Y. Tape Tr. 7.

[154] June 20, 1979 S.D.N.Y. Tape Tr. 8.

[155] Id.

b. Day and Ambassador Kikhia arrive for meeting; White late for meeting.—About twenty minutes before 6:00 p.m., Doonan saw Day and Kikhia travel to the Sky Top Restaurant.[158] Feeney and Wohlenhaus came over to see them.[159] During the conversation that followed while they waited for White, Day told the Ambassador that "There's a very distinct possibility that the President will not seek reelection." Kikhia said that if that is true then the President "has only [one] year."[160] Just before 6:00 p.m., Day learned from White that White would be there but that he would be about thirty minutes late.[161]

c. Feeney, Wohlenhaus and Brewer sit at separate table.—Feeney and Wohlenhaus left to sit at a table, separate from Ambassador Kikhia and Day. In the conversation, Wohlenhaus told Feeney that White is "a boomer" as a speaker but if "he doesn't want [anyone] to hear him, then he'll lean forward and talk."[162]

d. White arrives.—Finally, Wohlenhaus announced, "He's here."[163] Feeney said, and it is on tape, that White arrived at "5 minutes to seven."[164] Doonan noted the same time.[165] White sat down with Kikhia and Day. Inv. Doonan sat at an adjoining table.

Wohlenhaus, who was sitting across the room, said to Feeney, "James [Day] has done it again."[166] Feeney said, "Well, that's the man [White]; no question that's him."[167] Wohlenhaus observed, "It's important to him [the Ambassador] to listen."[168] Feeney said, "I think they're talking about something serious"[169] Wohlenhaus said, "I know they are. You can tell from the look on their face [that] they ain't [sic] talking about sunshine in the Bahamas."[170]

Feeney asked, "Why do you think he [White] would agree to meet in a place that's so open like this?" Wohlenhaus said, ". . . because you know if anybody said, ah, we saw you . . ." Feeney interrupted to finish the sentence, "It was not a clandestine meeting, right?"[171] Wohlenhaus said, mimicking White, "he'll say, 'My God, we [Day and I] go back to the University of Texas' ".[172]

Wohlenhaus then spoke of how it all got started. He said, "We hadn't the slightest idea [how to contact Bob Vesco] and Day says let me tell you something, if there's one man I know that knows how to contact Vesco, he said, it's Jim Brewer. And I'll be damned [Brewer did it]".[173]

Feeney said, "Is that right?" Brewer said, "Yep". Wohlenhaus said, "So he set up the meeting [so] the meeting couldn't a been better. It couldn't a gone better." Brewer volunteered,

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[156] Id. at 10.
[157] Id.
[158] Denver Ex. D–73, Inv. Doonan's notes of June 20, 1979.
[159] June 20, 1979 S.D.N.Y. Tape Tr. 11.
[160] Id. at 19.
[161] Id. at 26.
[162] Id. at 32.
[163] Id. at 49.
[164] Id. at 51.
[165] Denver Ex. D–73, Inv. Doonan's notes of June 20, 1979.
[166] June 20, 179 S.D.N.Y. Tape Tr. 50.
[167] Id. at 53.
[168] Id. at 54.
[169] Id. at 59.
[170] Id.
[171] Id. at 54.
[172] Id.
[173] Id. at 55.

> I probably know somebody to get to almost anybody if . . . yeah it may take a little while but I mean, ah.

Wohlenhaus said,

> No, I found that out Jim. But I tell ya that impressed me probably as much as I'm impressed today. Because I've always wanted to meet the man [Vesco] and when I walked in, I don't think I've been more impressed in my life. 'Cause I'm, like you know . . . I've seen his [Vesco's] pictures in all the magazines, books and when I saw him I said you know that's him. I recognized him. That's him (unintelligible). And he had on this old ragged (unintelligible) little shirt. And he was sitting there in his house. And there was Norman [LeBlanc, Vesco's aide] standing right behind him. And I said just like a picture out of a book I have [an] exact picture. [He laughs.] I was impressed. I was really impressed.[174]

Brewer said,

> You know I have another famous connection going right now.[175]

e. Day says White discussed converting the C–130s for an agricultural purpose.—Day later swore that during the conversation, White "mentioned to Ambassador Kikhia that he felt the only way Libya was going to get their C–130s was to do a certain agricultural modification, but the Ambassador seemed to understand it. And so I just sat because they were doing the talking." [176]

f. Day himself discussed with Ambassador Kikhia the conversion of the C–130s for an agricultural purpose.—According to Inv. Doonan, "at the point where John White left the table, Day and Mansur [Kikhia] were standing and spoke." Inv. Doonan overheard Day "telling Mansur [Kikhia] that things would be a lot easier if they [the Libyans] would modify the C–131s [sic]." [177]

Wohlenhaus said, and this is on tape, that the meeting lasted "25 minutes." [178] Inv. Doonan's notes say White left at about 7:15 p.m., so that the meeting lasted twenty minutes.[179] Across the room, Brewer observed, "The Ambassador's smiling. He's, he's very happy." [180] Wohlenhaus said, "Very warm".[181] Ambassador Kikhia then left Day to phone the Libyan Embassy.[182] Day motioned for Feeney to come over to his table; Feeney did.[183]

g. Day reports to Feeney what White said to Kikhia.—Feeney asked, "Is the Ambassador gone for the day now?" [184] Day said that Kikhia insisted that he, Day, meet the Charge D'Affaires and went to call him.[185] Feeney asked, "Did John [White] indicate to him [Kikhia] what should be done and so forth?" Day said, "Not only did John indicate it but John told him, and he gave him an old saying and he says—and then I will explain it—"Mi casa, su casa." [186] Feeney said, "I don't understand Spanish." Day translated, "My house is your house. He [White] said I am as available as your telephone is to my telephone. You can meet with Jimmy Day or you can meet without him." [187] Kikhia much later told FBI agents that he "felt, after that meeting, that he could go directly to White.”[188] Day said, “Here he [Kikhia] comes.”[189] Feeney left Day until Kikhia got up to leave the restaurant. Feeney said, “Let’s go over and say goodbye”.[190]

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[174] Id.
[175] Id. at 56.
[176] Day, Apr. 16, 1981. Denver Tr. 200.
[177] Denver Ex. D–73, Inv. Doonan's notes of June 20, 1979.
[178] June 20. 1979, S.D.N.Y. Tape Tr. 61.
[179] Denver Ex. D–73, Inv. Doonan's notes of June 20, 1979.
[180] June 20, 1979, S.D.N.Y. Tape Tr. 61.
[181] Id. at 62.
[182] Denver Ex. D–73, Inv. Doonan's notes of June 20, 1979.
[183] Id. at 64.
[184] June 20, 1979, S.D.N.Y. Tape Tr. 64.
[185] Id.
[186] Id.
[187] Id.

After Kikhia left, Feeney asked Day for “a five minute summation.” Day said that “they were to have lunch the following week with the Libyans.”[191] According to Day, White told Kikhia, “You’ve got the worst relations of any country in Washington because you have no relations. You follow up on nothing.”[192] White said,

> Mr. Ambassador, it is a very simple situation: . . . Jimmy Day has made a proposal to you . . . You know you either gonna accept the proposal or you’re not going to accept the proposal . . . It makes no difference [to me] . . . I make $125,000 a year. I’m gonna live . . . But I’m like everybody else, I love money.

Day assured Feeney that was “exactly” what White said and asked Feeney for his opinion,

> Do you think that man [Kikhia] was unhappy.

Feeney agreed that Kikhia did appear happy.[193] Day continued his summary,

> He [White] said ah, he said, “Jimmy has a plan. He has laid the plan out.” He said, “wanna know yes or no, are you going to [unintelligible] the plan?” The Ambassador says, “Yes, we are.” He [White] said, “Fine.” He said, “Ah, here is my card; here is my private phone number. He said you and I are on [sic] a direct communication that any time you need to talk to me you can talk to me through Jimmy [Day] or you can talk to me direct.”[194]

Day said that Kikhia then went to the phone to set up the meeting with the Charge d’Affaires and that “we have been invited to Libya” in July, all expenses paid.[195]

Day said that White told Kikhia, “He [White] was under a direct order from the President of the United States not to have contact of any type with Robert Vesco”[196] Feeney asked whether White said that “in front of him [Kikhia]”. Day said. “That is exactly right. He says now, there are certain things that have been agreed to concerning that [Vesco] situation; those things will be fulfilled.”[197] Shortly afterwards Feeney left the table and the restaurant.

C. THE NINETY DAY PERIOD OF INVESTIGATION TO DETERMINE WHETHER THE DEPARTMENT SHOULD RECOMMEND THE APPOINTMENT OF A SPECIAL PROSECUTOR

1. *The specific information that triggered the statute*

Day told Feeney after the June 20th meeting with Kikhia that the monies going to Mr. White would be divided among DNC Chairman White, White House Chief of Staff Jordan and the President. At least in the case of Mr. White, the money would be “washed” through an offshore bank in the Caribbean, in amounts of about $100,000 per year. Wohlenhaus told Feeney that earlier, while he was waiting for White to arrive.[198]

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[188] FBI 302 reported interview of Mansur Rashid Kikhia on Nov. 4, 1980 by S/A Lormel.
[189] June 20, 1979, S.D.N.Y. Tape Tr. 64.
[190] Id. at 68.
[191] Id. at 69.
[192] Id.
[193] Id.
[194] Id. at 70.
[195] Id.
[196] Id. at 73.
[197] Id. at 73–74.

2. The Department begins its investigation

This information received as of June 22 constituted "specific information" that the White House Chief of Staff and the President were possibly involved in a criminal conspiracy to receive a bribe. The Ethics in Government Act[199] requires that the Attorney General conduct a "preliminary investigation" whenever "specific information" that a person covered by the Act has committed a violation of any criminal law. The White House Chief of Staff and the President are covered by the Act[200] and it is a felony to conspire to receive a bribe.[201] Under the Act, the Attorney General must decide whether the matter warrants further investigation or prosecution by the appointment of a special prosecutor within 90 days of receiving the information.[202] The Department was therefore required to report its recommendation to the United States Court of Appeals for the District of Columbia Circuit, Special Prosecutor Division by September 19, 1979.

3. During the 90-day preliminary investigation, Day meets Libyan Charge d'Affaires Madfai

Within the ninety day preliminary investigation, on June 27, Day, Wohlenhaus, and Feeney met Major Ahmed al-Madfai, Minister Plenipotentiary, Charge d'Affaires to discuss the Libyan planes and a public relations firm.[203] Feeney did not wear a hidden recorder because the security at the Libyan Embassy might detect it. Brewer was not invited and did not attend the meeting.

a. Madfai requests proposal to release Libya's planes.—After some conversation, Major Madfai asked, "What's your proposal." Madfai said that he wanted to know "how much money it would take to get the planes released." Major Madfai said that he had been told by Vesco that it would take $25 million. That was the first time that Day, Wohlenhaus or Feeney had heard such a high figure. They had always believed the figure was $15 million.[204]

Madfai said he was certain that he could get the two 747s released "but the 747s [were] not all that important." What concerned Madfai was whether he could get the C–130s.[205] He said that he was "willing to pay $150 million to get the C–130s released" and "Mr. Vesco knows that."[206]

b. Madfai requests a written proposal.—After some discussion Major Madfai said that he wanted a two to three page written proposal that includes the $15 million figure that they had discussed as well as a written understanding that Day, Wohlenhaus and Feeney would represent the Libyan government with a budget of no less than $1.5 million. Madfai said that one-third of that budget would be in cash for the express purpose of bribing Congressmen and Senators to secure their support of Libya.[207] Madfai wanted Day to dictate the proposal that he outlined that instant. Day protested. Day said that he wanted to make a more considerate proposal. It was agreed that Day would submit his proposal to the Libyans by Monday, July 3, 1979. Madfai said he wanted the proposal by Monday so that he could get it to Kikhia in Tripoli.[208]

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[198] Denver Ex. D–73, Doonan notes of Feeney debriefing, dated June 22, 1979; for Wohlenhaus' discussion of the matter with Feeney, see notes 153–155, supra, and accompanying text. There is further corroboration. On June 26, Feeney had a taped conversation with Day confirming Day's earlier statement about the division of the monies among White, Jordan, and the President. Denver Ex. 24 (Feeney-Day taped telephone conversation, dated June 26, 1979).

[199] Title 28, United States Code, Section 591(a).

[200] Title 28, United States Code, Section 591(b).

[201] Title 18, United States Code, Section 201, 371.

[202] Title 28, United States Code, Section 592.

[203] Denver Ex. D–74, Inv. Doonan's notes debriefing Mr. Feeney re June 27, 1979 meeting with Major Madfai, Charge d'Affaires for Libya.

[204] Id. at 4.

[205] Id.

[206] Id. at 5.

4. Wohlenhaus discusses the proposal with Feeney

On June 30, Wohlenhaus told Feeney that the proposal would include a budget to accompany the employment contract but handle "the release of the birds" separately.[209] Wohlenhaus also said, "The birds are the key but the employment is the key, too. I'll tell you without the employment we can't get the birds." [210] Wohlenhaus said that the best way to handle the $15 million proposal involving the planes was "in person" [211] because Day and he don't want anything in writing if its going to be that commital". [212] Wohlenhaus said,

> John's made one thing very clear that he [John White] will come back here [to Texas] and run [for public office] and he said the best thing that can happen is, if he decides, if the man [President Carter] decides not to run because that means everyone will be scrambling to do their business in the next year and a half.[213]

5. During the preliminary investigation, Day submits a written proposal to the Libyan Charge d'Affaires

On about July 5, Day transmitted the proposal that Major Madfai requested on June 27. It stated, in relevant part, that the "group . . . will expend the necessary effort to insure an understanding of Libya's problems in all facets of the Executive Branch of the U.S. Government," inform the Executive Branch "as to the desirability and advantages of expending exports to Libya", and the group would "facilitate the issuance of export permits." The proposal understandably made no specific reference to exporting planes.

The proposal stated that the "group" would make Libya's views known "in the Congress of the United States *through personal contact* with the members of the body" and noted that the $1 million budget "does not include the sum of monies we discussed for *direct* public relations expenditure (emphasis supplied)." The additional "sum of monies" previously discussed was the $500,000 to bribe public officials. The letter stated that the group "felt you [Major Madfai] may wish to designate this in your report on a *special basis* (emphasis supplied)." [214]

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[207] Id. at 5–6.
[208] Id. at 11.
[209] Denver Ex., transcript of Feeney-Wohlenhaus telephone conversation, June 30, 1979, at 25, 26.
[210] Id. at 22.
[211] Id. at 13.
[212] Id.
[213] Id. at 24.
[214] James Day letter to Hon. Ahmed al-Madfai, Minister Plenipotentiary Charge d'Affaires.

6. *FBI denies funds to Feeney and tells Southern District to ask Assistant Attorney General Heymann*

Feeney attended meetings important to the investigation. Brewer was not included in those meetings. For the first time, Vesco, instead of Day, started to press Feeney to pay what he owed. And Feeney had no money to meet his obligation.

After Day submitted the proposal, Day, Wohlenhaus, and Feeney met with Major Madfai to discuss it.

On July 20, Day, Wohlenhaus and Feeney met with Vesco. Vesco insisted that Brewer, the FBI informant, not attend the Madfai meeting. Nor did Brewer attend the Vesco meeting afterwards.[215] Vesco told Feeney when he saw him in the Bahamas that he wanted Feeney to pay Day by August 15 "or step out of the deal". Vesco also said he wanted Feeney to represent him at all future Libyan dealings provided that Feeney stayed in the deal.[216]

On July 23, AUSA McNamara requested $23,000 of Merrill Parks, the FBI Supervisor in Washington, D.C. "coordinating the investigation" to permit Feeney to pay Day the balance. Supervisor Parks asked AUSA McNamara whether Day would "not look for [more] money in the future." AUSA McNamara said that Day might "look for more" money but he would not be entitled to it because Feeney owed him only $23,000 more of the $50,000 he originally agreed to pay. McNamara told Parks that Vesco paid $8,000 of Feeneys' debt, demanded payment of that debt for the first time in the investigation, and also issued an ultimatum to Feeney for the first time, namely, "pay or get out". Parks asked for McNamara's recommendation and McNamara unsurprisingly recommended that the FBI supply the $23,000 because the alternative was that Vesco would push Feeney "out of the deal" and AUSA McNamara said he "was not willing to assume the risk of that happening."[217]

Supervisor Parks said that the "situation would be better if Feeney became an FBI informant so that the Bureau would have *direct control* of Feeney (emphasis supplied)." AUSA McNamara told Parks that Feeney and his attorney rejected that proposal. Mr. Parks said that he "thought that some people in Washington had a hard time believing that Feeney could not be made an FBI informant."[218]

Mr. Parks proposed alternatively that Feeney become a "cooperating witness", remain under the control of the Southern District but the FBI would assist the Southern District of New York when Feeney was debriefed or wired to record meetings. Feeney told AUSA McNamara that he would become a "cooperating witness" provided that the FBI supply, among other things, the $23,000 to pay Day. McNamara so advised Parks but Parks told McNamara that he did not think his supervisors would approve the $23,000.[219]

On July 26, AUSA McNamara told Parks again that the $23,000 was the most important component of Feeney's request.[220]

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[215] Denver Ex. D–74, Inv. Doonan's Feeney debriefing notes for July 16–18, 1979.
[216] AUSA McNamaro Memo to File re Feeney, dated Sept. 12, 1979.
[217] Id.
[218] Id.
[219] Id.
[220] Id.

On July 27, S/A Witkowski interviewed a "confidential source", apparently Brewer, because the report of interview obviously relates to the Libyan plane investigation. The report states that Feeney "does not have the necessary $6,000 for James Day; and that Day needed the money demanded of Feeney to pay John White." In that respect, it confirmed what AUSA McNamara told Parks. The report however also stated that: (1) Feeney recently received about $175,000—without explaining why he presently had none of those monies and (2) that Cavanaugh, whom Brewer introduced to Feeney, was in Denver and had been instructed to draw a check on Kevin Krown's bank in the Virgin Islands.[221] Brewer originally introduced Cavanaugh to Feeney to "wash some cash from Denver." [222]

On July 31, Supervisor Parks denied the Southern District's request for two "stated" reasons: (1) Feeney had received $175,000 from various sources, and (2) an indictment of Feeney was imminent. McNamara asked Parks where he got that information. Parks said a "confidential source in Miami". McNamara apparently did not ask whether Brewer was the "source". As for the imminent indictment, Parks said that it would likely be in Denver, AUSA McNamara questioned the certainty and relevance of the FBI's information. Parks said only that the FBI's decision as to funding was final and if the Southern District wanted to pursue it further, "it would have to be done by Mr. Heymann [Assistant Attorney General] with Judge Webster [Director of the FBI]." [223]

7. *Southern District asks Assistant Attorney General Heymann for funds for Feeney but gets none*

On September 14, 1979, within days of the end of the ninety day period for the Department to conclude its preliminary investigation, Robert Fiske, Jr., then U.S. Attorney for the Southern District of New York, wrote Mr. Heymann advising him that the Southern District needed funding for Feeney to continue the investigation. U.S. Attorney Fiske told Mr. Heymann what had recently happened that made it imperative that the Department immediately supply funds to Feeney.[224]

Mr. Fiske stated that Vesco paid $8,000 to Day for Feeney before August 8. On August 8, Vesco agreed "in the face of Day's demand for payment," to pay Day Feeney's balance, then about $21,000. Vesco made no demands of Feeney until the week of September 4; he insisted that Feeney travel to the Bahamas. Feeney could not go, however, because he could not even afford the air fare.[225] Feeney missed meeting with Vesco, Day and Wohlenhaus who discussed the next scheduled meeting with Major Madfai. FBI informant Brewer did not attend the meeting; the meeting was therefore not covered.[226] U.S. Attorney Fiske asked the Department for whatever funding "may be available". Without funding, he said, "Feeney's future participation in the Libyan deal and association with the investigative subjects *will be completely terminated* or so limited . . . as to *eliminate Feeney's effectiveness* as a source of information." [227] Nevertheless, the Department supplied no funds.

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[221] FBI 302 Report of Interview of "confidential source" on July 27, 1979.

[222] See notes 107–109, supra, and accompanying text.

[223] See note 216, supra.

[224] U.S. Attorney Robert B. Fiske, Jr., letters to Assistant Attorney General Philip Heymann, dated Sept. 14, 1979.

[225] Id.

[226] Denver Ex. D–74, Inv. Doonan notes of Sept. 10, 1979.

[227] See note 224, supra.

During Appropriations hearings, Mr. Heymann testified about the circumstances under which the funds were denied. He swore that when the Southern District last requested funds, "that it was about time to stop funding that particular source of information [Feeney], who *could have gone on asking for funds forever*, but the FBI refused to give funds *on an indefinite basis* (emphasis supplied)." [228]

8. *The Department recommends that no special prosecutor be appointed*

Assistant Attorney General Heymann declined to say whether the Public Integrity Section recommended that a Special Prosecutor be appointed because, he said, "the Attorney General ought to enjoy the lonely splendor and pain of calling Special Prosecutors matters himself." [229] Moreover, he testified that he did not "think the recommendation to me [whether or not to appoint a prosecutor] should [even] be made public." [230] The Committee subpoenaed the Department's report. On September 19th, the Department recommended that "no further investigation or prosecution" was warranted and "that no Special Prosecutor should be appointed" (hereinafter the Report).[231] The Report is divided into three sections: "Allegation", "Investigation", and "Discussion".

a. The allegation.—The Allegation triggering the preliminary investigation ninety days earlier was that $7.5 million would be paid by the Libyans upon the release of a 747 and that these monies would be divided among President Carter, Mr. Jordan and DNC Chairman White. Day was cited as the source of the allegation but the report stated that "Day did not state [1] how and when the President and Mr. Jordan were involved, [2] when or with whom they had allegedly agreed to this scheme, [3] when they were to take action to effectuate the scheme or [4] how they were to be compensated for their alleged services." The Report made no mention of Day's statements: (1) that Mr. Jordan and President Carter were involved through Democratic National Committee Chairman White, (2) that they had been involved since early 1979, (3) that they would "take action" to release the planes when the financial arrangements were settled and (4) that they would "be compensated" through offshore bank transfers. No section of the report mentions that Day said the 727s would be released before the public announcement, that White purportedly contacted the State Department, that Libyan Ambassador Kikhia set the time and place for a meeting with White, that White met Kikhia, that White apparently gave Kikhia certain assurances, that Major Madfai requested of Day a written proposal for releasing Libya's planes and bribing public officials, that Day submitted a written proposal, and that discussions about the financial arrangements continued.

b. The investigation.—The report characterizes the evidence gathered in the investigation as "*a classic advance fee swindle* by which Day and others *may be attempting* to defraud the Libyans and others into investing in a scheme which Day and his co-conspirators *have no capacity to consummate.*" (emphasis supplied). This report is the first mention that Day "may be" trying to defraud the Libyans. The report ignores the evidence mentioned above, at least does not mention it, and presuming these matters were considered, implicitly discounts them without any explanation.

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[228] Hearings on State, Justice, Commerce, the Judiciary and Related Agencies Appropriations: Fiscal Year 1981 before the Committee on Appropriations, 96th Congress, 2d session 438 (testimony of Philip Heymann, Assistant Attorney General, Criminal Division, Department of Justice).

[229] Id. at 439.

[230] Id.

[231] Denver Exs., Report of the U.S. Attorney General, Department of Justice, submitted to the U.S. Court of Appeals, D.C. Circuit, Special Prosecutors Division, dated Sept. 19, 1979.

c. The discussion.—In the Report's Discussion the allegation is characterized as "at least double hearsay, it is uncorroborated by the evidence, and it is unlikely that Day really had the power to fix the Libyan plane deal." This section did not discuss whether Day through Mr. White, as Chairman of the DNC, with access both to Mr. Jordan and the President, may have had the "power". This section stated, "Assuming a piece of information is potentially true, the statute leaves to the preliminary investigation an analysis of the credibility of the information". It further states: "Not only has this [90 day] investigative period failed to provide any corroboration of the President's or Jordan's involvement, it has strengthened the Department of Justice's present opinion that Day is engaged in an ongoing scheme to defraud the Libyans and others into believing that, if and when the planes are ever released, he, Day, was somehow responsible." The report does not discuss the Department's refusal to fund Feeney during that investigative period and what, if any, consequence that had to the investigation.

D. FBI AUTHORIZES $25,000 FOR "ABSCAM" BRIBE OFFER TO WHITE

FBI supervisor Parks refused to give $21,000 to a Southern District informant within the 90-day investigative period. The day after the 90-days ran, the FBI was authorized to make a $25,000 bribe offer to White.[232] Mr. Parks authorized the $25,000.[233]

Brewer, whom Day knew to be an FBI informant, introduced Day to S/A Amorosa who posed as an Assistant to an Arab Sheikh. S/A Amorosa told Day, presumably taken in by S/A Amorosa, that what he needed from White was "an indication." [234] S/A Amorosa told Day this at the Georgetown house used in the ABSCAM investigation. Day was videotaped.[235] For undisclosed reasons, there was no apparent attempt to lure Mr. White to this Georgetown house.[236] Day took S/A Amorosa to White's office at DNC Headquarters on September 20. S/A Amorosa did not get the "indication". There probably was an audio tape made of that meeting in White's office but the Committee has not heard it. Brewer, oblivious to the fact that Day knew he was an informant, said that Amorosa believed that White had been "tipped off".[237] Day insists that he did not tell White. White denies he was told.

E. FEENEY'S ROLE AS AN INFORMANT IS DISCLOSED TO THE NEW YORK TIMES; THE UNDERCOVER INVESTIGATION ENDS

In the latter part of September 1979, Marvin Segal, Feeney's attorney got "word" from the Southern District "that there was going to be an article about the investigation."[238] Segal told the Southern District "how serious" that was and asked them "to use whatever offices they had to hold onto that story because it looked like it was going to compromise everything". The Southern District told him that "they couldn't do anything about it."[239]

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[232] Subcommittee Hrg. Tr. 314–315 (testimony of Brewer).

[233] Dan Sears, Esq., Feeney's attorney in *United States* v. *Feeney*, 80–Cr.–54 (D. Colo.), represented to the Court in April 1981 that "James Brewer was acting as an undercover informant not only in the Libyan plane investigation, but on the ABSCAM investigation as well and was responsible for submitting [sic] Mr. Amorosa to Mr. White through Mr. Day." See Apr. 6. 1981 Denver Tr. 82.

[234] Subcommittee Hrg. Tr. 314–315 (testimony of Brewer).

[235] Id. at 315.

[236] The Committee staff understood that the standard method of operation in the ABSCAM investigation was to invite the subject to a location, either a boat, hotel or house, where the subject could be videotaped within the control of the FBI.

[237] Subcommittee Hrg. Tr. 315 (testimony of Brewer).

Reporters for the *New York Times* told Mr. Segal "that they *knew* that Feeney was an informant (emphasis supplied)". They did not say how they knew it but they said, "They were going to publish his [Feeney's] name as an informant and that he [Feeney] would then be exposed."[240] Feeney permitted the reporters to interview him to avoid being identified.[241]

F. F.B.I. INTERVIEWS JOHN WHITE

On September 28, the FBI interviewed John White. White told the FBI Agents that Day visited his office in June 1979 rather than in April 1979. Day told him that "it would help his [Day's] business relationship if a Libyan U.S. plane sale deal could be worked out." White told the FBI agents that he told Day that he "wanted nothing to do with any [such] deal, and did not want to involve himself with what Day represented." White told the Agents "that politically he did not believe that it would be a good idea for the President or anyone to meet with the Libyans about this deal." Day asked White if he "would agree to meet with the Libyan Ambassador to the United Nations" and White told the FBI agents that he told Day, "he would not." Day purportedly then asked if White "would meet Day after work for a drink, and if during their visit the Libyan United Nations Ambassador stopped by, would White be offended." White replied, "He would not be offended." He told the agents that he met with Day and the Libyan Ambassador "that evening", that is the same June evening that he met Day at DNC Headquarters. White said that the meeting lasted "only five to ten minutes"; Wohlenhaus and Doonan had timed the meeting at twenty to twenty-five minutes. White stated that "he called the State Department to advise them of the contact." White told the Agents that "this call [not calls] to the State Department was made to *alert* the State Department and to *recommend* that *no follow up* be made and *no meetings* be arranged between the Administration and the Libyans (emphasis supplied)". White said he "believed he talked to Warren Christopher at the State Department, because he only knows a few individuals at State." He added that he "would not bother Cyrus Vance [Secretary of State] with this information."[242]

The evening following Mr. White's FBI interview, Edward Pound, a reporter for the New York Times, interviewed him.[243]

On September 30, 1979, the New York Times published a story, "Inquiry is Reported on Libya Plane Sale".[244] Mr. White reportedly said that he refused to help arrange an appointment as proposed by

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[238] Segal, Oct. 6, 1980, Denver Tr. 94.

[239] Id.

[240] Id. at 89.

[241] Id.

[242] Oliver Revell, Assistant Director, Criminal Investigative Division, FBI informed the Committee Chairman in a letter dated May 13, 1982 that in accordance with FBI practice the Special Agents who conducted the interview "have read the transcription of the interview [herein cited] and have certified its accuracy and completeness."

[243] White Dep. Tr. 24.

[244] "Inquiry is Reported on Libya Plane Sale", N.Y. Times, Sept. 30, 1979.

Day for the Libyan Representative and the President. White reportedly said, "I told him that it would be improper". He also said, "I don t think it would be right to go through the party process to settle sensitive diplomatic matters. I absolutely refused to help them get an appointment at the White House." He however "refused to say publicly whether he himself had been in touch with State Department Officials." Day reportedly said that "he had not asked Mr. White for help in reaching the President and that the subject of the airplanes to Libya was not discussed." This article contained the first published report "that Mr. White had been under covert surveillance during the inquiry."

On October 1, the New York Times ran a second story, "Allegations of Libyan Bribery Plot Reportedly will go to Grand Jury." [245] White was quoted stating that he met with Ambassador Kikhia for "*no more than five minutes* (emphasis supplied)"; he told the FBI "only five to ten minutes." [246] Day reportedly said that "the only reason I asked John White to stop by for a drink to meet the Ambassador is because neither of them has ever met each other." [247]

G. SOUTHERN DISTRICT ASKS JOHN WHITE TO TESTIFY BEFORE THE GRAND JURY FOR THE FIRST TIME

On October 1, 1979, Assistant U.S. Attorney Tom Sear of the Southern District of New York called Mr. White to ask him to testify before the Grand Jury on October 11. AUSA McNamara, who had been handling the case, resigned and AUSA Sear replaced him.[248]

After White spoke to AUSA Sear, he called Warren Christopher, according to White, "to reconfirm my memory of my original call in April [1979]" White said that Christopher told him that his logs reflected the April 19th call.[249]

The day before White appeared before the Grand Jury Undersecretary Newsom called him and left a message asking Mr. White to return the call.[250] When this Committee asked Mr. White during his deposition about Mr. Newsom's phone message, he swore he did "not recall it".[251] While the Exhibit was being marked, Mr. White asked, "Do you know how many phone calls come in, I can only guess, in a day." [252] He was asked, "From David Newsom?" He answered, "There are a lot of David Newsoms in the world, my friend." During the next question, Mr. White interrupted to say, "I mean that are people of equal importance." [253]

On October 11, White appeared before the Grand Jury in the Southern District. AUSA Sear asked the questions. This Committee has obtained access to excerpts of White's testimony.[254]

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[245] "Allegations of Libyan Bribery Plot Reportedly will go to Grand Jury", N.Y. Times, Oct. 1, 1979.

[246] See note 242, supra, and accompanying text.

[247] See note 245, supra.

[248] White Dep. Tr. 26.

[249] Id. at 29.

[250] White Dep. Ex. 23 (Newsom phone message, for Oct. 10, 1979).

[251] White Dep. Tr. 90.

[252] Id.

[253] Id. at 91.

[254] On May 5, 1982 the Committee staff asked John Martin, the U.S. Attorney for the Southern District, to make available Mr. White's Grand Jury testimony; he refused. Flannery Aff. 3. He was also asked if he would seek an order from the U.S. District Court to release the Grand Jury testimony; he refused to do so "under any circumstances." Id. On May 6, 1982, the Committee's staff listened to a taped interview of John C. White conducted by the Southern District on October 10, 1980. See note 95, supra. The circumstances giving rise to this interview are described in notes 327–349, infra, and the accompanying text. During the interviews AUSA Raymond Levites read excerpts of Mr. White's Grand Jury testimony. See Flannery Aff. 22–23.

White gave the following sworn testimony before the Grand Jury in answer to AUSA Sear's questions:

Question. During 1979, did you have any contact with anybody in the State Department relative to planes going to Libya?

Answer. Well, I think so, yes.

Question. About when did that take place?

Answer. About the planes?

Question. Yes.

Answer. I'm not sure about the date of the plane situation. I could have called someone in the State Department relative to my conversation with Mr. Wyatt [in late June]. I think the conversation that I had with the State Department about the Libyans after the April 18th meeting [with Day] actually could have concerned the planes but my memory involved basically that there may be a request to come in. Because, in the conversation about the United Nations Ambassador seeing the President, that going through me was not a proper way to do it. Politically, it was unwise. I would recommend against it. And the *only way* that a foreign official could see the President would be *to go through the State Department*, through the so-called "desk system" that they have, that the experts in that particular area would analyze and see if it was proper. *My thrust* at any time . . . *would have been to warn* that it might come that way and politically I thought it would be unwise if it were to happen. But there would have been a conversation about the Libyan planes somewhere in this process because *this* [the planes] *was the underlying problem* and we all knew it was there.

Question. So when you had your conversation with Mr. Day, on the 18th of April, you understood that that was the underlying problem with the Libyans—referring to the planes.

Answer. Well, it was *highly publicized.*

Question. And this conversation you had with someone at the State Department relative to the subject matter of a possible meeting with the President, is it your testimony that would have been occasioned by Mr. Day's approach to you?

Answer. Well, *I wanted to make sure it did not happen.*

Question. What caused you to make that contact with the State Department relative toward the Presidential meeting and so forth?

Answer. Well, my job is to build a constituency for the Democratic party and not create problems for the President.

Question. Did anybody else come to your office besides Mr. Day and talk with you about the President meeting with the Libyan representative?

Answer. No.

Question. So, it was specifically in response to Mr. Day's approach that you contacted the State Department?

Answer. Well, other than this phone call from Mr. Wyatt—he [Mr. Wyatt] did not ask for a meeting but that was part of the process. I didn't tie the two events together quite frankly and I still don't. I think there is something that is highly publicized and a lot of people are working from different angles.

Question. How many times did you talk to somebody from the State Department about this general subject matter?

Answer. I think *once* but it could have been more than that, *maybe twice.* It could have been in relationship once to Mr. Day and once to Mr. Wyatt. It could have been once each time.

Question. Or it could have been once in reference to either or both?

Answer. That's right.

Question. Who did you talk to?

Answer. I think Mr. Christopher, the Deputy Secretary. [It] show[s] that I called on April 18, [sic] according to my calendar. Mr. Christopher does not remember the gist of that conversation.

Question. Other than the contact you had with the State Department that you just testified about [with Mr. Christopher], did you contact or discuss with anyone in the Government what we have termed the Libyan deal in 1979?

Answer. *No, I have not.* (emphasis supplied)

The next day after his Grand Jury appearance, Mr. White spoke to Undersecretary Newsom. White testified at his deposition, when confronted with Newsom's second phone message that he wrote on the phone message the words, "Log doesn't show" and "Ask what problem on airplane [sic]—nothing *improper*" (emphasis in the original).[255]

Several days later, Mr. White filed an affidavit to supplement his Grand Jury testimony. He did not amend his Grand Jury testimony to add that he had spoken with Undersecretary Newsom as well as Mr. Christopher at the State Department. His affidavit was directed solely at the conversation that Day reported to Feeney on June 20 in which White told Kikhia, "Mi casa, su casa," that is, "My house is your house" and that he was "as available as your [Kikhia's] telephone is to my [White's] telephone." [256] White said in his affidavit:

> During the course of my testimony, I was asked whether I indicated to Ambassador Kikhia of Libya, in a meeting earlier this year, by the use of a Spanish phrase, that he was welcome at my house any time. I recall responding to the question by asking Mr. Sear if he meant a phrase like "mi casa, su casa"; and Mr. Sear replied in the affirmative. At the time of my testimony, I recalled using no such phrase or making any such indication to Ambassador Kikhia.
>
> After the conclusion of my testimony, and while reflecting on it the following night, I recalled that I had discussed with Ambassador Kikhia what languages were used in his country. I recall that he responded that French and Spanish were spoken there. I then said to him that I did not know French and only a few phrases in Spanish. I recall then saying that I knew the phrase "mi casa, su casa."
>
> My reference to that Spanish phrase arises from my having frequently patronized a restaurant in Austin, Texas named "MI CASA, SU CASA." [257]

The Southern District of New York did not speak to White again until the summer of 1980.

H. THE SOUTHERN DISTRICT DOES NOT ASK ITS INFORMANT TO TESTIFY; HE IS PROSECUTED INSTEAD

Despite Feeney's role as an informant in the investigation, he never appeared before the Grand Jury.[258]

At the same time he was cooperating with one Assistant U.S. Attorney, another one was investigating him. The cases were kept "separate"—until the Assistant who was prosecuting him was put in charge of the case in which he was cooperating. He did not testify before the Grand Jury. He was prosecuted instead.

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[255] White Dep. Ex. 24 (Newsom phone message for Oct. 12, 1979); White Dep. Tr. 92.

[256] See notes 184–190, supra, and the accompanying text.

[257] White Dep. Ex. 27 (In the matter of a Grand Jury Investigation, Affidavit of John C. White (S.D.N.Y., sworn Oct. 17, 1979)).

[258] Levites, Apr. 8, 1981, Denver Tr. 659.

1. *Southern District investigates Krown-Feeney*

While Feeney was cooperating with AUSA Sear in the Libyan plane investigation, another Assistant U.S. Attorney, Raymond Levites, was investigating him. The principal target in the investigation involving Feeney was not Feeney; it was Kevin Krown. What is known about that investigation in 1979 relates mostly to Krown. AUSA Levites knew of the FBI's investigation of Krown in the Southern District since early 1979.[259] It was early 1979 when Feeney advised Inv. Doonan that he believed that there was a leak in that investigation, that S/A Rod Andress, the FBI agent assigned to the Krown case, spoke to Krown about the case.[260] AUSA Levites swore that those allegations were "entirely unsubstantiated and baseless." [261] Despite Levites sworn statement, Krown did tell Feeney in a taped conversation that its was "bizarre" that Andress visited Krown's home and "started reviewing the names [in the investigation] and, you know, the personalities and staff like that." [262]

AUSA Levites said that he learned that Feeney was involved in the Krown investigation in the latter part of 1979 from S/A Andress.[263] It was Brewer who introduced Feeney to Cavanaugh [264] and AUSA Levites testified that he knew that Brewer worked with S/A Witkowski out of the Florida office and was involved in Southern District cases, unrelated to the Libyan plane case.[265]

2. *Krown agrees to produce Jordan documents for Southern District*

In mid-September AUSA Levites purportedly called Mr. Krown's attorney, to tell him that"an indictment [was] coming down next week".[266] Three days after that Brewer took Cavanaugh to have dinner with Roy Cohn, Esq., whose partner represented Krown.[267] Shearn Moody, who attended that dinner, later said that not only did Cavanaugh discuss his own problems about "hot checks" over that dinner but also the Libyan plane deal.[268] Moody told Wohlenhaus that they "were gonna [sic] go to the federal D.A. and try to make a deal to get *them* [sic] off the hook on the hot check charges by telling the Libyan plane story and *adding a little to it*" (emphasis supplied).[269]

Krown wrote a scenario "about all the players, the Brewers, the Feeneys, the Days, the Vescos" and gave it to John Doyle, Chief of the Criminal Division in the Southern District.[270] In October 1979, Criminal Division Chief Doyle asked Levites just "whether or not we [the Southern District] had a case against Mr. Feeney, and whether we had a case against Mr. Krown." Doyle told AUSA Levites "if you are going to indict those guys [Feeney and Krown] please let me know before you file any such indictment." [271] According to Brewer,

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[259] Levites, Oct. 1, 1980, Denver Tr. 77.

[260] March 29, 1982, Committee Hrg. Tr. 119 (testimony of Feeney).

[261] Levites, Oct. 1, 1980, Denver Tr. 126.

[262] For the limited purpose of determining whether S/A Andress was leaking information, Doonan had Feeney tape a conversation with Krown. Denver Ex. A, Feeney-Krown taped telephone conversation dated Feb. 28, 1979 at 9; Mar. 29, 1982 Committee Hrg. Tr. 119–120.

[263] Levites, Oct. 1, 1980, Denver Tr. 78.

[264] See notes 107–109, supra, and accompanying text.

[265] Levites, Oct. 1, 1980, Denver Tr. 203, 204.

[266] Feeney so advised Inv. Doonan on Sept. 14, 1979. See Denver Ex. D–75, Doonan's notes, dated Sept. 14, 1979.

[267] Subcommittee Hrg. Tr. 349 (testimony of Brewer).

[268] Denver Exs., tape Wohlenhaus-Feeney telephone conversation, dated Sept. 29, 1979.

[269] Id.

[270] Denver Exs., Grand Jury Testimony of Anthony Patrick Cavanaugh, the Southern District of New York, dated Jan. 24, 1980, at p. 74.

[271] Levites, May 12, 1980, Denver Tr. 184.

Krown made a deal with the Southern District; part of it was the production of “signed documents by Hamilton Jordan explaining the cut-up of the money and what [Hamilton] Jordan was getting out of it [the Libyan plane deal].”[272] Levites said that he “knew [that Inv.] Doonan was going down to see Krown” who was in the Virgin Islands and AUSA Levites was present afterwards when Inv. Doonan reported to Doyle what Krown had said.[273]

3. Krown fails to produce Jordan documents for the Southern District

By December 1979, Krown had not produced the Hamilton Jordan documents that he promised to produce. In December 1979, Krown in the Virgin Islands called Cavanaugh; Brewer was present. After speaking a while, Cavanaugh interrupted his conversation with Krown and said,

> Hey [Brewer], you've got to help me out with this guy [Krown]. He's getting me very upset.[274]

Brewer picked up the receiver. Krown asked,

> Where is this document [the document by Jordan describing how the money would be shared]?

Brewer said,

> Well, let me tell you something. I have been to every meeting practically and I have been as close as anybody could be to this case. I have never seen or heard of such a document.

Krown “flew into a rage” and said,

> Well, I have promised and done everything in the world and assured the Southern District of New York that I have been delivering those documents. Now you [Brewer] tell me they don't exist. They're going to be madder than ever at me [in the Southern District]. They're going to throw the book at me now because I've obviously lied to them, in their opinion.[275]

Brewer did not say why Krown expected Brewer to produce those documents.

4. Southern District speaks on Feeney's behalf at sentencing

Feeney's sentencing in the Eastern District had been adjourned because of Feeney's cooperation. On December 27, he was sentenced in the Eastern District.[276] The Southern District spoke on Feeney's behalf in the Eastern District. AUSA Sear told the sentencing Judge that Mr. Feeney had worked in “an undercover capacity” and at “considerable risk to his safety”. He said that Feeney obtained “hard evidence” and “was entirely truthful”. He said that Feeney “‘certainly worked very hard on a *very important investigation*” and that any problems the investigation had were due to “outside influences”, certainly not to Feeney.[277] Inv. Doonan said that Feeney had spent “a substantial amount” of his own money, $10,000, so that the investigation could proceed.[278]

After AUSA Sear and Inv. Doonan spoke, AUSA Max Sayah of the Eastern District said, “The Government has no other position in this particular case that is before the Court" (emphasis supplied).[279] Feeney was sentenced to probation. Despite the fact that the Eastern District Assistant said not a disparaging word about Feeney's cooperation or the seriousness of his offense, AUSA Levites later testified, "And to the dismay of the Eastern District, who *felt he should be incarcerated*, he got probation" (emphasis supplied).[280] AUSA Levites did not identify who "felt" that Feeney "should be incarcerated."

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[272] Subcommittee Hrg. Tr. 349 (testimony of Brewer).
[273] Levites, Oct. 1, 1980, Denver Tr. 81, 82; May 2, 1980, Denver Tr. 184.
[274] Subcommittee Hrg. Tr. 350 (testimony of Brewer).
[275] Id. at 350–51.
[276] Sentencing minutes, *United States* v. *Feeney*, 78–Cr.–356 (E.D.N.Y.).
[277] Id. at 5–6.
[278] Id. at 7.

5. Southern District changes Assistants

AUSA Sear planned on leaving the office after Feeney's sentencing. It was necessary to assign another Assistant to the Libyan plane case. Criminal Division Chief Doyle had kept the Krown-Feeney and Libyan cases separate. He had specifically kept AUSA Levites unaware of the Libyan plane investigation. Without explanation, shortly after Feeney's sentence in the Eastern District, Doyle asked Levites who was investigating Feeney to assume responsibility for the Libyan plane case in which Feeney was cooperating. Doyle told Levites something about the case and that he (Levites) knew some of the individuals from the Krown case.[281] Doyle also remarked, "*You* [Levites] *have a good relationship with the FBI*" (emphasis supplied).[282]

Levites assumed responsibility for the case "some time around New Year's when the other Assistant [Sear] left."[283]

6. Southern District changes policy toward its informant

Levites said when he became responsible for the case, he became aware "of the steps that had been taken to segregate the Libyan plane case from other cases in the office."[284] He said "that Mr. Doonan had erected in effect a Chinese wall between himself and the [Krown-Feeney] offshore bank investigations"[285] and that Inv. Doonan "had, insofar as it was possible, tried not to discuss Krown or Krown's associates" with Feeney.[286]

a. AUSA Levites puts Feeney "on notice".—On January 15, 1980, Doonan planned to debrief Feeney at Feeney's apartment. He asked AUSA Levites along to meet the informant in the Libyan plane investigation.[287] Unbeknownst to Doonan, Levites went to Feeney's apartment to "put him [Feeney] on notice" that he had to change his understanding with the Southern District.[288]

Levites felt that Feeney's prior relationship and working agreement with Inv. Doonan was no longer satisfactory.[289] Levites knew that Feeney was represented by Marvin Segal, Esq.[290] but did not call him first because he believed that short of actually accusing Feeney of a crime and taking him in custody he did not believe that he had to notify his attorney.[291]

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[279] Id.
[280] Levites, Apr. 8, 1981, Tr. 682.
[281] Levites, May 12, 1980, Tr. 159.
[282] Levites, Oct. 1, 1980, Tr. 19.
[283] Levites, May 12, 1980, Denver Tr. 159.
[284] Id. at 160.
[285] Id. at 165.
[286] Id. at 166.
[287] Id. at 162.
[288] Id. at 186.
[289] Id. at 131.
[290] Id. at 185–186.
[291] Levites, Oct. 1, 1980, Denv. Tr. 211–212.

When they arrived at Feeney's apartment, after they were introduced, Feeney told Doonan that Krown had called Vesco; they discussed Krown at some length.[292] AUSA Levites did not prevent Feeney from discussing Krown.[293] Not at first. After Feeney had spoken for some time, Levites told him,

> Wait a minute, Mr. Feeney. I want you to understand that, you know, Krown was the subject of investigation. You should understand that you know, *you're being looked* at by the FBI." [He said,] "you [Feeney] *may have exposure*, and this [conversation] is an *on-the-record* discussion. (emphasis supplied)."[294]

AUSA Levites explained that "on-the-record" meant to him that what Feeney said "could be used against him." [295] Levites told him, "If your offenses have been substantial, you're going to have to plead guilty to some of those criminal offenses about which you would be telling us." [296] Levites told Feeney, "Tell us about Krown. Tell us about the banking activities of others about which I think you have knowledge." Feeney said, "If I start to cooperate with you in these other areas, I may have exposure. It may not be my interest to do that." [297] Levites still saw no need to call Feeney's lawyer because the meeting "was a voluntary non-custodial meeting" and was "terminable at any time" by Feeney, presumably by leaving his own apartment or throwing AUSA Levites and Inv. Doonan out of his apartment.[298]

As one would expect, Feeney said that he wanted to talk to his attorney. But that did not end the conversation. Levites knew from Feeney's earlier remarks that he was supposed to phone Krown that night. Levites thought this was "a very valuable opportunity." Levites wanted Feeney to record that conversation.[299] Feeney said again that "he wanted to talk to Segal [his attorney] about it because things may be said in the conversation which will implicate me" [300] Levites persisted. He told Feeney that he could record the conversation, put the tape in a sealed envelope, and subsequently ask his attorney if the Southern District could hear it.[301] Feeney left the apartment for awhile. Levites discussed this proposal with Doonan. After Feeney returned, he agreed to make the recording.[302] They drove from Feeney's apartment to the U.S. Attorney's offices to make the tape. On the way, Feeney confided to Levites that "he felt [that] he had been deceived and mistreated in the past." Levites "assured" him, "If you're straight with me, I'll be straight with you." [303] That is the first, last and only conversation Levites had with Feeney.[304] The only time Levites saw Feeney after that was in court, after Feeney had been indicted on Federal charges in Denver and New York City.[305] But that result was not instantly achieved.

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[292] Denv. Ex. D–75k, Doonan's notes of meeting with Feeney, dated Jan. 15, 1980.

[293] Levites, Oct. 1, 1980, Denver Tr. 130.

[294] Levites, Oct. 1, 1980, Denver Tr. 129.

[295] Levites explained to Chief Judge Winner at a hearing in Denver, Colorado that by "on the record", he meant that Feeney "should be fully aware that nothing he [Feeney] ever said to me [AUSA Levites] was going to be a secret in the sense that I was going to feel legally or morally obliged not to repeat it. All my [sic] deals were going to be subject to my repeating his [Feeney's] conversation in any court of law [in] judicial administrative proceeding talk to my superiors, and that *whatever he said could be used against him* (emphasis supplied)." Levites, Oct. 1, 1980, Denver Tr. 29–30, 90 and 130–131; See also Levites, May 12, 1980, Denver Tr. 165.

[296] Levites, Oct. 1, 1980, Denver Tr. 36, 40.

[297] Id. at 36, see also Levites, May 12, 1980, Denver Tr. 168.

[298] Levites, May 12, 1980, Denver Tr. 187–88.

[299] Levites, Oct. 1, 1980, Denver Tr. 40.

[300] Id. at 40–41; see also, Id. at 92.

[301] Id. at 41.

[302] Id.

[303] Id. at 42.

[304] Id. at 44.

b. FBI Agent Andress calls Feeney "an active, malevolent criminal".—Within a day or two of talking to Feeney, Levites told S/A Andress that he had met with Feeney, what Feeney said about Krown, that Feeney taped a conversation with Krown, and that Feeney might cooperate against Krown.[306] According to Levites, S/A Andress said that, "He simply wanted to make sure that Feeney who [sic] he regarded as an active, malevolent criminal, shouldn't escape responsibility for his criminal offenses because of his cooperation with our office [the Southern District]" [307] Levites said, "I assured him [S/A Andress], if Feeney did commit crimes, he'd be prosecuted." [308] S/A Andress testified that, "Mr. Levites never discussed with me Mr. Feeney' prosecution." [309]

c. AUSA Levites makes it possible for Cavanaugh to cooperate against Feeney.—On January 24, AUSA Levites questioned Cavanaugh before the Grand Jury. Cavanaugh decided to cooperate and later swore under oath that Levites is "the one that [sic] opened the door for me [Cavanaugh] to come to Denver. He is the one that suggested that I come [to Denver] and take care of my problems." [310] As a result of agreeing to cooperate and to testify in Denver, Cavanaugh pled guilty to only one felony count.[311]

d. AUSA Levites demands Feeney plead guilty.—Levites demanded that Feeney, who had been cooperating, plead guilty to one felony count.[312] Segal said that Levites' proposal was "unacceptable". Levites said "that some of the criminal acts Mr. Feeney had committed had been committed [in Denver with Cavanaugh] during his period of cooperation with the Government." [313]

Mr. Segal wanted to take the matter to Levites' superiors. A meeting was set for Segal to talk to Criminal Division Chief Doyle in Levites' presence; Feeney waited outside the meeting.[314] Doonan told Levites, "I don't want to be present at such a discussion [involving the Krown investigation]. My dealings with Mr Feeney [as an informant] are in one context only, information about Vesco and the Libyan plane deal." Doonan said "I don't want to back-door Jim [Feeney] in any sense". Doonan did not attend.[315]

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[305] Id.
[306] Id. at 47–48.
[307] Id. at 50–51.
[308] Id. at 51.
[309] Andress, Apr. 9, 1981, Denver Tr. 921.
[310] Denver Exs, Grand Jury testimony of Anthony Patrick Cavanaugh, the Southern District of New York, dated Jan. 24, 1980; Cavanaugh, July 14, 1980, Denver Tr. 36.
[311] Id. at 39. Cavanaugh's cooperation agreement provided (1) that he would "provide truthful testimony at trial of all other defendants" including Feeney in Denver, (2) that he, Cavanaugh, would plead guilty in Denver to one 5-year felony count in the 25-count Denver indictment, the remaining counts to be dismissed at sentencing, (3) that the U.S. Attorney for Texas would not prosecute Cavanaugh for matters pertaining "to use of St. Vincent, West Indies, off-shore bank checks," (4) that the Harris County District Attorney's office in Houston, Texas would dismiss the one count indictment charging Cavanaugh with felony theft, and (5) that AUSA Levites on behalf of the Southern District would accept a guilty plea to one felony count of conspiracy to defraud using checks drawn upon off-shore banks in St. Vincent, West Indies. See Denver Ex. 11, Cavanaugh Plea Agreement and U.S. Attorney Joseph Dolan's letter to Olney G. Wallis, Esq., re *United States* v. *Cavanaugh*. Criminal Case No. 80–Cr. 4 (D. Colo.). Although that was Mr. Cavanaugh's agreement, he has only pled guilty to the single count in the District of Colorado. As of May 31, 1982, he has not pled guilty in the Southern District.
[312] Levites, Oct. 1, 1980, Denver Tr. 43, 94.
[313] Id. at 43.
[314] Levites, May 12, 1980, Denver Tr. 176.
[315] Id. at 176–177.

Mr. Segal told Doyle that “he didn't think that Mr. Feeney in fairness ought to be asked to plead to anything.” [316]

Levites did not tell Segal that he had sent Cavanaugh to Denver, that Cavanaugh was cooperating, or “that Mr. Feeney was soon to be indicted in Denver.” AUSA Levites knew all of this.[317] He did not tell Segal about the matters because he “did not feel at liberty to discuss the pending Grand Jury investigations with Mr. Segal.” Levites did tell Segal that Mr. Feeney is “either all the way on board or all the way off.” Segal said that he would get back to them and Feeney told Doonan that it was in his lawyer's hands.[318]

After Feeney was indicted in Denver and in New York, Feeney made allegations in court papers filed in the Denver Court proceedings complaining about the way the Southern District had handled the matter. The Southern District withdrew its offer to let Feeney plead to one count. At first, Levites testified, “We [the U.S. Attorney's Office] wanted him [Feeney] to withdraw the allegations he made which were baseless and untrue.” [319] Levites conceded that Feeney and his lawyer were “perfectly willing to do that” [320] and to plead guilty to one count. But the Office thereafter insisted that Feeney had to plead guilty to three felony counts.[321] Levites explained, “It was a matter of institutional professional concern that their [Feeney's] pleadings [against the Southern District] not remain unrebutted on a record before a U.S. District Judge.” [322] Levites said, “In an office where everybody works and loves—and what he said here in papers were irresponsible and in our view untrue.” [323]

I. SOUTHERN DISTRICT CLOSES ITS CASE AS TO JOHN WHITE

1. Southern District asks John White to testify before the grand jury for the second time

After the Southern District lost the use of its only informant in the Libyan case, AUSA Levites—still responsible for the case—turned his attention to John White. AUSA Levites asked White to appear a second time before the Grand Jury because Levites discovered that White had spoken to Assistant Secretary Moose, in addition to Deputy Secretary Christopher. Levites told White's attorney that he had learned of White's conversation with Moose. There is no evidence that AUSA Levites also advised White's attorney that he learned that White had spoken to Newsom as well.[324]

Before Mr. Pierson agreed to produce his client, he asked, “Isn't it true that Mr. White is not a target?” AUSA Levites said, “That's fair and that's true.” [325]

Mr. White appeared before the Grand Jury on August 5, 1980 and he was asked the following questions by Levites and gave the answers indicated:

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[316] Id. at 177.
[317] Id. at 178.
[318] Id.
[319] Levites, Apr. 8, 1981, Denver Tr. 697.
[320] Id.
[321] Segal, Oct. 6, 1980, Denver Tr. 49 ; Levites, Apr. 8, 1981, Denver Tr. 663.
[322] Levites, Apr. 8, 1981, Denver Tr. 698.
[323] Levites, Apr. 8, 1981, Denver Tr. 663.
[324] White Dep. Tr. 54. (Statement of Stu Pierson, Esq.).

Question. Now I am asking you about a third person whether you called [Mr.] Moose specifically and discussed with him the possibility of setting up a meeting between the President and the Libyan Ambassador?

Answer. I don't remember it. I really don't. I have no recollection whatsoever.

Question. Well, if you had in view of what you have just told us, you have . . .

Answer. I'm saying I could have.

Question. How could you have when you say it is not a proper way to do it, politically it was unwise. You said you would recommend against it. You said, I thought it was unwise if it were to happen and I called Secretary Christopher to warn him and suggested to him it was unprudent [sic]. Having done that sir, how could you? Under what circumstance could you, would you, did you call Assistant Secretary of State Moose and inquire what the Administration's feelings would be toward setting up a meeting between the President and the Libyan Ambassador?

Answer. I don't think I did that. I have no recollection of it whatsoever. I wouldn't need to. I had feelings about it.

Question. I'm not asking you whether you needed to or what your feelings are and I don't in any way mean to be discourteous. But what I am asking you is this. You have told us under oath and you have told the FBI that you had very limited contacts with the Department of State on that matter, on this matter, and that such contacts as you had was [sic] either neutral of a very limited kind in connection with the claims [sic] or reference to the subject matter of a meeting between the President or another high level official, a Libyan Ambassador, [and] that that was appropriate. You said you don't want to be involved. And just as a courtesy to the State Department, you informed them of this overture by Day suggesting that it was not wise politically and you would now recommend against it. Now in light of all this. Did you say you told Secretary Christopher on April 19th? Did you call Moose on the same day, on the 19th and inquire of him as to what he thought about the possibility of arranging such a meeting between the President and the Libyan Ambassador?

Answer. I couldn't imagine doing it. If the record shows that I called Mr. Moose, I absolutely, all I can answer you is [that] you are asking me something [that] I have no knowledge of whatsoever. Well, if this happened, if the record shows I called Mr. Moose, I'm sure I called Mr. Moose in the same light that I called the others, [out] of concern that they may get a request from the Libyan Ambassador to see the President. *I had told Mr. Day when he saw him that was the only way it could be done, was through the State Department.* If it got to me, I would recommend that it not be done and that's the truth of the situation.

Question. I said I'm not suggesting anything other [than] that, when you say you can't imagine having done so—and if the record shows it . . . I mean the thing is sir, either you did this or you did not do this. If you did not do it, then you didn't do it. If you did do this, it is directly contrary to your prior sworn testimony and inconsistent with what you have told us.

Answer. I have no memory of even talking to Mr. Moose much less what we would have talked about but it could have occurred.

Question. When you say it could have occurred . . . it could have occurred that you called Moose and inquired what about the possibility of setting up a meeting between the Libyan Ambassador and the President.

Answer. I would disagree with that because from the stand-point of that, that would be contrary . . . (emphasis supplied)[326]

2. Southern District advises White of the "Serious Inconsistencies in his testimony and of the Government's evidence

Following White's second Grand Jury appearance, Levites invited him to his office. White's attorney, Inv. Doonan and S/A Lormel were also present.

AUSA Levites said that he "was troubled with [a] portion of White's Grand Jury testimony." He said, "There were a number of *serious inconsistencies* between the evidence developed during the course of the investigation and White's Grand Jury testimony."[327] He said he wanted "to air some of these differences." He wanted White to realize that the discussion would be "on the record."[328]

That the interview was "on the record" is the only resemblance between this interview and the meeting Levites had with Feeney. Levites did for White what he had refused to do for the Southern District's own informant: he told him not only what the Southern District's allegations were but what the evidence was as well.

Levites reviewed one by one the Southern District's concerns: (1) that in response to the Southern District's requests for telephone log records White produced none for January to June 1979, "a crucial period of the investigation" when it was suspected that White spoke to Day, State Department officers and others; (2) that White swore under oath that "the *only one* he had contact within the State Department regarding the [Libyan] matter was [Deputy Secretary Warren] Christopher which had been on *one*, or *possibly two* occasions" whereas he had spoken to *three* officials in the State Department (Messrs. Moose, Christopher, and Newsom) on at least *three* occasions, assuming he spoke to each once; and (3) that White testified under oath that he called to warn the State Department, specifically Mr. Christopher, although, according to Mr. Christopher *and* Mr. Newsom he had "at no time" warned them and, if he had, they "would have definitely made a memorandum of such a conversation."[329]

Levites carefully reviewed the government's evidence with Mr. White. He told White that "one of the most troublesome areas was White's testimony regarding Richard Moose." AUSA Levites told White that he had undercover tapes recorded after Day met White on April 18. In those tapes, Day brags that White was trying to arrange a "meeting for the Libyan Ambassador and the President through Mr. Moose." He showed Moose's telephone log reflecting White's call to Moose. He said that he had spoken to Mr. Moose and that Moose said that White asked "how to arrange a meeting between the President and the Libyan Ambassador to the United Nations and that Moose recalls telling White that such a meeting was 'off-the-wall', that his desk does not handle Libya and that he probably referred him to Hal Saunders [Assistant Secretary for Far Eastern and South Asian Affairs]." [330]

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[326] Flannery Aff. 28–29.

[327] Denver Ex., Doonan Memorandum of Meeting of DNC Chairman White, Mr. Pierson, AUSA Levites, Inv. Doonan, and S/A Lormel at the U.S. Attorney's office for the Southern District of New York, dated Aug. 5, 1980 at 1.

[328] Id.

[329] Id. at 2–3.

Levites said that he, Doonan and Lormel also interviewed Messrs. Christopher and Newsom. Levites told White that Christopher and Newsom said "that White had called on April 19, 1979 and had discussed the possibility of a meeting between a high administrative [sic] official and a high Libyan official and the status of the C-130 military transport planes." Messrs. Christopher and Newsom made it clear that Mr. White had not "warned" them. He showed White the telephone log reflecting his call to Christopher. Levites did not have to tell White that there was no entry for Newsom; Newsom told White that himself in October 1979, the day following White's Grand Jury appearance.[331]

According to Doonan's memorandum, "[d]uring the course of Levites' remarks to the effect that White's testimony seemed 'less than completely truthful', White seated next to his attorney, nodded affirmatively to the above remarks [that is summarized herein] but said nothing verbally. His attorney [Stu Pierson] was taking notes during these remarks and was not looking at his client." [332]

3. Southern District advises White that he has "Exposure"

Sometime after Mr. White's second Grand Jury appearance, Mr. Pierson asked Mr. Levites whether Mr. White was now a target. AUSA Levites answered, "You don't want to ask me whether John White is a target. You don't want to hear the answer to that question." Mr. Pierson therefore told Mr. Levites, "Okay, then I won't ask you [that question]".[333]

Levites later testified "There came a time in the case when I felt that the statement [that White was not a target of the investigation] was no longer accurate." According to Mr. Pierson, Levites said, "I do think he [Mr. White] has some [criminal] exposure." [334]

4. The Southern District meets with White for the last time before closing the case

On October 10, 1980, Assistant U.S. Attorneys Levites and Dominic Amorosa interviewed Mr. White. Also present were Mr. Pierson, White's attorney, Inv. Doonan, and S/A Lormel.

The interview was taped and the Committee has prepared a transcript of that tape. It must be assumed that the Southern District conducted that interview to address the "serious inconsistencies between the evidence developed during the course of the investigation and White's Grand Jury testimony." Before White was apprised of the Southern District's evidence against him, he swore before the Grand Jury that the "only way" to arrange a meeting for a foreign dignitary with the President was through the State Department.[335] White testified that he believed that such a meeting should never occur; it would be politically unwise. As the "only way" the meeting could occur would be "through the State Department", White made "one or possibly two calls" to the State Department to "alert" and "warn" them not to do it.[336]

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[330] Id.
[331] Id. at 2.
[332] Id. at 3.
[333] Flannery Aff. 3; White Dep. Tr. 55.
[334] White Dep. Tr. 55; Levites, Apr. 8, 1981, Denver Tr. 674.

By the time the Southern District interviewed White on October 10, 1980, White had been advised of the Government's evidence. White knew that the Government knew that he had spoken to three officers (not one) at the State Department *on at least* three occasions (certainly not just one or two). According to the officials that White spoke to, White had not warned *any* of them. According to them, White instead inquired about the status of the C-130s and how to arrange a meeting for a foreign dignitary and the President—exactly what White claimed he called to prevent.

AUSA Levites reviewed the Government's evidence with some precision [337] and told White: "It must be evident to you that we are disclosing [our evidence] to you in a way that is *very different* from [sic] most criminal investigations in an attempt to be as fair as we can be . . . information that people in your position *are not usually* made privy to" (emphasis supplied).[338] Levites never said what circumstances in this case compelled him to make this exception, to give White "very different" treatment or information that was "not usually" given. The evidentiary disclosures most certainly affected White's responses to the questions put to him.

AUSA Levites said to White, "You didn't tell us in the Grand Jury in October [1979] about Newsom." In White's second Grand Jury appearance, when Levites specifically asked him about Newsom, White only acknowledged, that "maybe" he spoke to Newsom.[339] White told Levites that he would "accept" as fact Levites' representation that he spoke to Newsom.[340] Pressed by AUSA Levites to explain why he asked Newsom about the status of the C-130s, White said it was "as a matter of curiosity" because he wanted to know as much as he could "what is our policy on any given situation." [341]

AUSA Levites told White that White did not remember Moose's name until specifically asked about it during his second Grand Jury appearance. White said he did not remember it then. White said that it was only when Levites disclosed the evidence of that contact to him afterwards in the U.S. Attorney's office that his recollection was "triggered."[342]

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[335] On Oct. 11, 1979, Mr. White testified, "And the *only way* that a foreign official could see the President would be to go through the State Department, through the so-called 'desk system' that they have, that the experts in that particular area would analyse and see if it was proper (emphasis supplied)."

See Flannery Aff. 22.

On Aug. 5, 1980, White testified, "I had told Mr. Day when he [sic] saw him that was the *only way* it [the meeting] could be done, was through the State Department (emphasis supplied)."

See Flannery Aff. 29.

[336] On September 28, 1979. White told the FBI Agents that "this call [not calls] to the State Department was made to *alert* the State Department and to recommend that *no follow up* be made and *no meetings* be arranged between the Administration and the Libyans (emphasis supplied)". See note 242 supra and accompanying text.

On October 11, 1979, Mr. White testified: "My thrust at any time would have been to *warn* that it might come that way and politically I thought it would be unwise if it were to happen (emphasis supplied)." See Flannery Aff. 22.

On August 5, 1980, Mr. White testified that, if he called Moose, it was out "*of concern* that they [the State Department] may get a request from the Libyan Ambassador to see the President" and that if the request "got to me, I would recommend that it *not be done* and that's the truth of the situation" (emphasis supplied). See Flannery Aff. 29.

[337] See generally Flannery Aff.

[338] Id. at 42.

[339] Id. at 36.

[340] Id. at 58.

[341] Id. at 59.

Turning to the question of White's warnings, White told Levites, "I think I used the word warning in [my] grand jury testimony and, on second thought, I don't know that I *ever* used the word warn with *anybody*." (emphasis supplied)[343] Instead of warning Christopher, White now said he called him as courtesy. He said, "If I can reconstruct the conversation with Warren Christopher, it would have to be in the line of fact that I made these calls and I wanted you [Deputy Secretary Christopher] to know about it."[344] Levites asked White if he had not warned Christopher. White said, "I may not have."[345] AUSA Amorosa asked White what permitted him to swear in his first Grand Jury appearance that he had called Christopher to warn him. White said, "I think I said to Secretary Christopher that I had these conversations with his Assistants and I wanted him to know about it."[346] He was asked did he tell the State Department that the proposed meeting with the Libyan Ambassador was "politically unwise." He said, "I said it to *somebody* [sic]". White then described what he said to "somebody" but without identifying anyone. Amorosa's reaction was, "Fine." Your recollection is you *said it*. You *said it to somebody* at the State Department.[347] Thus was the Southern District satisfied. White nevertheless retained the view that any meeting between a foreign dignitary and the President would have to be made through the State Department.[348]

They also asked White questions to adduce what White could have expected from Day. White said that Day referred to "our people" when he came to White's DNC office and "that they [Day's people] made large contributions in the past." White said, "I know 'they' had been involved," presuming that Day was referring to the Moodys. Day told White that "they" gave approximately $400,000 in a previous political race. White said, "the implication was that he [Day] was trying to say to me, 'We would do *as much* for you.' (emphasis supplied)," and White "had the assumption that he [Day] was saying that, 'I'm going to support you for Governor.'" White said he told Day that it was "too early" to run for 1982.[349]

The interview ran almost three hours. It was Mr. White's last personal contact with the Southern District.

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[342] Id. at 27, 30.

[343] Id. at 39.

[344] Id. at 44.

[345] Id. at 45.

[346] Id. at 44–45.

[347] Id. at 46.

[348] During the interview White told AUSA Levites, "I think I told him [Day] that the appointment *would have to be made* through the State Department (emphasis supplied)." See Flannery Aff. 51.

AUSA Amorosa then asked a few questions and obtained the following responses:

AMOROSA. You called the State Department with respect to the matter?

WHITE. That's correct.

AMOROSA. You asked what would be the procedure in having a meeting set up between the President and the Libyan Ambassador?

WHITE. I don't. I can't accept that premise that I asked that because, hell, I know the procedure, I don't have to ask.

AMOROSA. And that was through the State Department?

WHITE. Well, *I know*. And, you know, I don't know the procedure in the State Department *per se*, how they make their decisions, but . . .

AMOROSA. But you know it was through the State Department?

WHITE. But *through the State Department* and, I don't, I don't think . . . it is not everybody that can get an appointment with the President of the United States even if they are in the government.

See Flannery Aff. 52–53.

[349] Flannery Aff. 16–17.

5. *Day pleads guilty in Southern District claiming he falsely represented White's actions*

About a month later, James Day pled guilty to a single felony count of conspiracy to defraud. Day was not charged by Indictment. He voluntarily waived his Fifth Amendment constitutional right to have a grand jury consider the charge. He pled guilty to an Information filed by John Martin, the U.S. Attorney for the Southern District. One of the means by which Day purportedly carried out the conspiracy, according to the information that U.S. Attorney Martin filed was that he "falsely represented the nature and extent of the actions that John C. White would undertake to assist Day in his efforts on behalf of the Libyan Government." On the same day that James Day pled guilty, there was also filed with the Court a Cooperation Agreement entered into by Mr. Day and the Government on September 19, 1980. Mr. Day apparently agreed to plead guilty even before the Southern District had interviewed White regarding his "serious inconsistencies". Mr. Day agreed to testify on behalf of the Government. Day, who had been a target, now became an informant.[350]

AUSA Levites wrote on Day's behalf at his sentencing on February 8, 1981: "In sum, it can be fairly said that Mr. Day has both from a sense of contrition and in an attempt to improve his ultimate posture at sentence and assist the Government, undertaken in good faith to provide the various law enforcement agencies all the information at his disposal concerning the criminal activities of others." Mr. Day was sentenced to four years.[351]

6. *Southern District Informs White that the case is closed as to Him*

In November 1981, John Martin, the U.S. Attorney for the Southern District, through AUSA Levites, advised Mr. Pierson that the investigation in the Southern District had been closed as to Mr. White without seeking any indictment of Mr. White.[352]

J. WHITE TESTIFIES BEFORE THE COMMITTEE

1. *White's State Department contacts*

After the investigation closed as to Mr. White, he appeared before the Committee on March 30, 1982. His sworn testimony before the Grand Jury in the Southern District on both appearances was that the "only way" to arrange a meeting for a foreign dignitary with the President was through the State Department.[353] He nevertheless told the Committee, "If I had wanted that Libyan Ambassador to see the President of the United States, the State Department would have been the *last place* I would have called (emphasis supplied)." [354]

During his deposition, staff asked White about his prior sworn Grand Jury testimony that the "only way" that a foreign official could see the President would be to go through the State Department. White said, "If I said it was the *only way*, I probably was mistaken." [355] He later said, "I don't know that I ever used the word *only*. Because if I did, that is incorrect. The President can see anybody he wants to. If I said that, I was incorrect."[356]

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[350] AUSA Levites letter to Hon. Richard Owen, U.S. District Court Judge *re* Cooperation of James Day: *Information, United States* v. *Day*, 80–Cr.–   (SDNY) (Owen, J.).

[351] Id.

[352] See Flannery Aff. 3.

[353] See note 335. supra and accompanying text.

[354] March 30, 1982 Committee Hrg. Tr. 91 (testimony of John White).

[355] White Dep. Tr. 81.

2. *White's June 20th Meeting with Kikhia*

During Mr. White's deposition, staff asked him to describe the arrangements for his June 20th meeting with Kikhia.

The Committee staff had heard a conversation taped on June 11 in which Ambassador Kikhia advised Day that he wanted to "avoid" White's office, suggested that Day "arrange for dinner, for example" with White, and requested that the meeting with White be held on either June 18 or June 20. On June 11, the White meeting was set for June 20.[357] The Committee staff saw pictures of the meeting that proved, as per Kikhia's request, that it was not held in White's office but at a hotel restaurant.[358]

White gave the Committee his version of how the June 20th meeting arose. According to White, the meeting was first arranged on the day it occurred, not a week earlier. Despite the fact that Kikhia told Day he wanted to "avoid" White's office,[359] White's sworn testimony is that Day "*wanted to bring him* [Ambassador Kikhia] by the [DNC] office, if I remember correctly."[360] White said, "and I told him [Day] no. I did not want any kind of a situation where the Libyan Ambassador would create an *official appearance* (emphasis supplied)."[361] White also said, he "would not meet him in a hotel room." White claimed that he agreed to permit Kikhia to "just drop in and say 'hello' while we [Day and he] were having a drink."[362]

Committee staff asked White if he was aware of the June 11th recording and whether he heard the tapes or read a transcript of it. White said, "I am not" and "I have not."[363]

Staff read portions of the transcript to White showing that Ambassador Kikhia selected the time and, if not the exact place, made it clear that he certainly wanted to avoid meeting at one place, White's office. After reading a portion of the taped transcript aloud,[364] staff asked, "So, a week earlier, Kikhia said that he didn't want to go to your office."[365] White's only response was, "He's got good sense, too."[366]

3. *White's September 28 FBI Interview*

On September 28, 1979, when the FBI interviewed White, they asked him about the June 20th meeting with Kikhia. Staff asked Mr. White during his deposition whether he was "confused".[367]

White testified under oath, "When the FBI first talked to me, I did not know whether they were talking about Liberia [sic] or Libya."[368] White swore, "I am not an African expert nor am I a foreign affairs expert. The only contact that I had had with either country that I could possibly remember was going to some kind of luncheon at one time with the Liberians [sic]—and I have forgotten where he was having it, but there were a lot of people—when I was Deputy Secretary of Agriculture. And it was so long that I thought I never would get out of it. That is all I can remember: How long are we going to have to sit here?" [369]

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[356] Id. at 121.
[357] March 30, 1982 Committee Hrg. Tr. 91 (testimony of John White).
[358] See notes 151–197, supra, and accompanying text.
[359] See note 131, supra, and accompanying text.
[360] White Dep. Tr. 126.
[361] Id.
[362] Id.
[363] Id. at 127.
[364] Id. at 127–128; White Dep. Ex. 35 (tape transcript of Kikhia-Day meeting of June 11, 1979).
[365] Id. at 128.
[366] Id.
[367] Id. at 139.
[368] Id. at 140.

White also testified: "And the Ambassador from Liberia [sic] goes to the First Baptist Church which I attended at that time. I remember he [the Liberian Ambassador] always carefully positioned himself in the opposite pew from the President, where the President could see him or he could see the President." [370]

III. Analysis

A. SUMMARY OF FINDINGS

The FBI informant (Brewer) arranged a meeting with fugitive financier Robert Vesco that started this investigation. The first target of the investigation (Day) claims it was entirely the informant's idea.[371] Even if it was not the informant's idea, it is undisputed that no target of the investigation knew Vesco when the investigation began. The informant did not know Vesco. No one, including the informant, knew how to contact Vesco. The FBI informant said, "I probably know somebody to get to almost anybody, but it may take a little while." [372] It took the informant about four months to contact Vesco.[373] When it happened, one of the targets (Wohlenhaus) was overwhelmed by meeting Vesco. He said, "I've seen his [Vesco's] picture in all the magazines, books and when I saw him, I said you know, that is him." [374]

At the first meeting, Vesco set the agenda. He sought to reverse a State Department ban against the export of planes to Libya.[375] When the FBI suspected that Vesco had succeeded in reversing that ban, neither theFBI nor anyone in the Department showed any concern that they may have effected the release of the 727s to Libya.[376] After the planes were released, the first target (Day) lost interest in the Libyan plane deal because the deal was costing him money and there was no prospect of the Libyans giving him any soon.[377] The FBI could have let the investigation die but it did not.

The FBI informant instead encouraged his first target (Day) to stay "in" the deal and permit someone else to cover his expenses.[378] As he had earlier located Vesco, the FBI informant now located a convicted felon (Feeney) to become his partner.[379] The second target (Feeney) similarly demanded an introduction to Vesco and got it.[380] He would not have otherwise met Vesco.

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[369] Id.
[370] Id.
[371] See notes 15–16, supra, and accompanying text.
[372] See note 174, supra, and accompanying text.
[373] See note 17, supra, and accompanying text.
[374] See note 174, supra, and accompanying text.
[375] See notes 21–24, supra, and accompanying text.
[376] See notes 28–31, supra, and accompanying text.
[377] See notes 32–34, supra, and accompanying text.
[378] See note 35, supra, and accompanying text.
[379] See notes 36–37, supra, and accompanying text.
[380] See notes 38–39, supra, and accompanying text.

The FBI's second target was already under investigation in the Southern District. He made the Southern District an offer that he could never have made if the FBI had not introduced him to Vesco. He told the Southern District that he would lure Vesco to a place where they could extradite him, promised to spend his own money, and asked the Southern District to consider conferring immunity if he succeeded.[381] The FBI thereby helped its target become an informant.

For a time, both the FBI and Southern District informants investigated each other. It was because of a teacup that the FBI and the Southern District learned of each other's informant. The Southern District informant gave the Southern District a teacup allegedly handled by Vesco. The Southern District sent the teacup to the FBI to confirm that the fingerprints were Vesco's. Once the FBI confirmed that the fingerprints were Vesco's, the FBI understandably asked the Southern District, "Where did they come from?" The Southern District refused to say. Philip Heymann, the head of the Department's Criminal Division, summoned FBI and Southern District representatives to his office in Washington, D.C. The anomaly was manifest. But the Department permitted the two separate investigations of the same conspiracy to continue.[382] There was a modification about a month after the first meeting. They agreed to "coordinate" the "separate" investigations although the Southern District said there were "many things that the FBI did [afterwards] that we [the Southern District] were not aware of." [383]

While the FBI and the Southern District were "coordinating" their separate investigations:

(1) On one occasion (April 11) both the FBI informant and the Southern District informant were "wired" to tape the same meeting and each other. The FBI surveillance report referred to the Southern District's informant as "an unknown white male." [384]

(2) On a second occasion (May 20), three of the six people at the meeting were reporting to the FBI or the Southern District. Both the FBI and Southern District monitored the meeting, but neither recorded it. Presumably each believed that the other agency was recording it.[385]

(3) By the time the FBI could plainly identify the Southern District's informant in their surveillance reports, they began an undercover investigation of him. The FBI used their information to pursue the Southern District's informant a second time.[386]

Moreover, there was a critical flaw in the FBI informant. Although relentless in locating targets and introducing them, he was also indiscreet. He told his first target's friend (Phillips) that he was an FBI informant and the friend told the target (Day). The target excluded the informant from meetings apparently when he did not think he could outsmart him.[387]

This might be comic if the object of this conspiracy, to subvert foreign policy, was not so serious. It is irrefutable that 727s were released to Libya, that the target met with John White (the Chairman of the Democratic National Committee),[388] that Mr. White contacted the Undersecretary of State who negotiated the release of the 727s,[389] that Mr. White met with the Libyan Ambassador,[390] that Mr. White apparently gave the Libyan Ambassador some assurances (a target of the investigation said on tape that he had),[391] that the Libyan Charge d'Affaires shortly thereafter requested a written proposal embodying a plan to export Libya's planes and to bribe Congressmen in exchange for vast sums of money,[392] and that a written proposal was submitted to the Libyan Charge d'Affaires.[393]

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[381] See notes 47–54, supra, and accompanying text.
[382] See notes 64–65, supra, and accompanying text.
[383] See notes 82–84, supra, and accompanying text.
[384] See notes 85–88, supra, and accompanying text.
[385] See note 112, supra, and accompanying text.
[386] See notes 107–111, supra, and accompanying text.
[387] See notes 66–69, supra, and accompanying text.

That was the state of affairs when the Department received "specific information" that the White House Chief of Staff and the President intended to share the Libyan's bribe with Mr. White. The allegations triggered the 90-day "preliminary investigation" to determine whether a special prosecutor should be appointed.[394] During that 90-day period, the FBI informant was excluded from the meetings, no doubt for the reason cited and because Vesco did not want him there.[395] While the Southern District informant did attend, the Southern District needed funds to assure that he would continue to be invited. The Southern District informant still owed about half the $50,000 commitment that he originally made to meet Vesco. The Southern District requested the necessary funds ($23,000) from the FBI, the balance that their informant owed. There would be no further requests. The FBI denied the request, stating that he was not an FBI informant and cited misconduct by the Southern District informant known to the FBI. The misconduct was that incited by the FBI informant at the FBI's behest.[396] The Southern District asked Assistant Attorney General Heymann to reverse the FBI's decision. They told him that if they did not get the funds that their informant's "future participation in the deal and association with the investigative subjects *will be completely, terminated* or so limited . . . as to *eliminate* [the informant's] *effectiveness* as a source of information" (emphasis supplied).[397] Mr. Heymann upheld the FBI's decision and denied the funds because, he testified, the informant "could have gone on asking for funds forever", although there was no evidence that that was true.[398] Within days of denying the Southern District's request for $23,000, the FBI authorized spending $25,000 to offer a bribe to White in the FBI's ABSCAM undercover investigation.[399]

At the end of that ninety days, the Department recommended that a special prosecutor *not* be appointed, relying in part on the purported failure of the undercover investigation during the period when the FBI denied funds to the principal informant in the case.[400]

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[388] See note 94, supra, and accompanying text.
[389] See note 98, supra, and accompanying text.
[390] See notes 151–185, supra, and accompanying text.
[391] See notes 186–197, supra, and accompanying text.
[392] See notes 203–213, supra, and accompanying text.
[393] See note 214, supra, and accompanying text.
[394] See notes 198–202, supra, and accompanying text.
[395] See notes 215–216, supra, and accompanying text.
[396] See notes 217–228, supra, and accompanying text.
[397] See notes 224 and 227, supra, and accompanying text.
[398] See note 228, supra, and accompanying text.
[399] See notes 232–237, supra, and accompanying text.
[400] See notes 229–231, supra, and accompanying text.

And then there were the press accounts. Reporters called up the attorney for the Southern District informant, told his attorney that they knew he was an informant, and that if he did not talk to the press, he would be identified as an informant. The Southern District told the attorney that it could not stop the story. The story ran. And the undercover investigation ended.[401]

The Southern District praised its informant in open court for being "entirely truthful" and for obtaining "hard evidence" working in an undercover capacity on an important case.[402] The next month, the Southern District however told its informant that his understandings with that office were no longer satisfactory. The only thing that happened in that single month was that a new Assistant U.S. Attorney (Levites) became responsible for the case. The new Assistant U.S. Attorney did not first discuss his change of heart about the informant with the informant's attorney. He discussed it with the informant instead. He told the informant that anything he told him could be used against him and insisted that the informant talk about matters that the informant plainly said would implicate him in other crimes. The informant said that he wanted to speak first with his attorney. Assistant U.S. Attorney Levites asked the informant to tape a conversation that would also very likely implicate him in the crime for which he was under investigation. The informant repeated that he wanted to speak to his attorney. The prosecutor persisted and the tape was made. Although the tape was never used against him, that was the last time and the only time that AUSA Levites met the informant before the informant was indicted in Colorado and New York.[403]

The principal witness (Cavanaugh) against the Southern District's informant, introduced earlier to him by the FBI informant,[404] swore that it was AUSA Levites who "opened the door" that permitted him to cooperate against the Southern District s informant.[405]

Having lost the cooperation of the Southern District's sole informant in the Libyan plane case, AUSA Levites turned his attention to an investigation of DNC Chairman John White. Levites would not tell the Southern District's informant in the presence of counsel either the allegation or evidence against him. But he told White in the presence of his attorney with specificity what were the Southern District's concerns and the evidence that demonstrated the "serious inconsistencies" between White's sworn Grand Jury testimony and the evidence.[406]

White told the FBI and swore under oath before the Grand Jury that the "only way" to arrange a meeting with a foreign dignitary and the President was through the State Department.[407] He told the FBI and the Grand Jury that he 'alerted" and "warned" the State Department not to arrange any meeting between the Administration and the Libyans.[408] He told the FBI that he did this in a single call to

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[401] See notes 238–241, supra, and accompanying text.
[402] See notes 276–280, supra, and accompanying text.
[403] See notes 281–304, supra, and accompanying text.
[404] See notes 107–109, 311, supra, and accompanying text.
[405] See notes 310–311, supra, and accompanying text.
[406] See notes 327–332, supra, and accompanying text.
[407] See notes 335, supra, and accompanying text.
[408] See note 336, supra, and accompanying text.

Deputy Secretary Christopher.[409] On his first appearance, he told the Grand Jury he made one or maybe two calls to Christopher.[410]

Following his second Grand Jury appearance, the Southern District told him that they knew that he spoke not only to Deputy Secretary Christopher, but also to Assistant Secretary Moose and Undersecretary Newsom as well. The Southern District told him that none of the State Department Officials had been warned by White.[411] AUSA Levites made it crystal clear that White was being treated "in a way that is *very different from* [sic] *most criminal investigations*" and giving White "information that people in your position are *not usually* made privy to" (emphasis supplied).[412]

After the evidence was made known to him, White said that his recollection had been "triggered as to Moose and he "accepted" the fact that he spoke to Newsom. Finally he said he was mistaken when he testified that he "warned" Christopher. He no longer recalled who specifically he warned. But, he knew that the warned "somebody".[413] That appeared to satisfy the Southern District for they decided not to indict him and closed the case.[414]

Months after the Southern District closed the case as to White, White told the Committee that the State Department was not the "only" way to arrange a meeting for foreign dignitaries. He told the Committee it was the "last" way.[415]

At a glance, the investigation "achieved" the following:

(1) James Brewer is still an informant;

(2) James Day—Brewer's first target—became an informant himself, pled guilty and remains in custody;

(3) James Feeney—another of Brewer's targets—became an informant, then an informant-target, then a target, convicted at trial and he is now in custody;

(4) Anthony Cavanaugh—one more of Brewer's targets—turned informant against Feeney to whom Brewer introduced him;

(5) James Wohlenhaus, a Brewer target remains under investigation since 1979;

(6) Robert Vesco, remains a fugitive, last heard of in Nicaragua; and

(7) the Libyans—they got the 727s they wanted.

B. CONCLUSIONS

This is very obviously an investigation that should never have begun. The time and money that the FBI spent to join two demonstrably cunning manipulators (Vesco and Day) directly contravenes Congress' intent in enacting a criminal conspiracy statute to deter, not to promote criminal combines. The FBI's job is to detect conspiracy, not create it.

The nature of the co-conspirators and the crime that was the object of this conspiracy, namely to subvert American foreign policy, demanded special care and attention. The FBI however gave no thought to the investigation's profound implications for foreign policy and, if anything, was careless about monitoring the actions of its informant.

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[409] See note 242, supra, and accompanying text.
[410] See note 254, supra, and accompanying text.
[411] See notes 327–332, supra, and accompanying text.
[412] See note 338, supra, and accompanying text.
[413] See notes 329–334, supra, and accompanying text.
[414] See note 352, supra, and accompanying text.
[415] See note 354, supra, and accompanying text.

Although the FBI was entirely unable to monitor its informant or the investigation, the FBI regenerated this investigation when they should have let it die. Their informant sought after another susceptible target, a convicted felon (Feeney). Ironically, the FBI bootstrapped their target to informant status by introducing him to Vesco. The FBI target became a Southern District informant who was "investigated" while he "cooperated". The Southern District informant held this anomalous status as informant and as target because the Southern District could not decide which way they wanted it. So, they had it both ways—as long as it suited them.

When the Department realized that it had an FBI informant and a Southern District informant, the investigation with its informants should have been consolidated into a single investigation of this single Libyan plane conspiracy. But it was not. It remained two separate investigations. If there had been only one investigation instead of two or if the purported "cooperation" between the FBI and Southern District was genuine, then there would not have been a meeting that both agencies taped, another that neither taped, the misidentification of the Southern District informant in an FBI surviellance report, and finally the investigation of the Southern District's informant by the FBI informant at the expense of the Libyan plane investigation.

Rather than "cooperation" or "coordination", the hallmark of this investigation was "competition". And the competition was hottest when the investigation seemed to have caught fire requiring the most intense investigative effort, necessarily meaning cooperation, not competition. By the summer of 1979, there had been: (1) the release of the 727s, (2) White's call to the State Department, (3) White's meeting with and apparent assurances to the Libyans, (4) the Libyans' request for a proposal, (5) the submission of the proposal, and (6) negotiations with Libya about being paid for the planes. At that critical juncture when the FBI informant was excluded from meetings, the Southern District informant needed funds to maintain contact with the investigative subjects. The FBI nevertheless refused funds to the Southern District informant, among other reasons, because he was not an "FBI informant". It was not the amount of funds requested that mattered for within days of denying the Southern District's last request, the FBI authorized the expenditure of more money to offer a bribe to White in the FBI's ABSCAM investigation.

The Department thereafter recommended not to appoint a Special Prosecutor. Even though the informant's effectiveness had been crippled because the FBI denied him funds, the evidence available to the Government was ample to corroborate Day's allegation about White House officials and meet the minimum threshold evidentiary standard to appoint a Special Prosecutor. That is not to say that Day's allegations would have been proven true. But a Special Prosecutor should have been given a chance to determine, independent of the investigation's tortured history, what happened.

No one knows how the press learned that Feeney was an informant. Suffice it to say that the leak to the press and its timing is suspicious. It ended any hope of continuing the undercover investigation.

As stated at the outset, the Southern District decided to have it both ways with its informant. After erecting a wall between the "Libyan" case in which he cooperated and the "offshore" case in which he was investigated, the Southern District tore down the wall without warning either the informant or his attorney. Indeed, the Southern District denied its informant any opportunity to have his counsel present when first he was advised that things had changed. He repeatedly requested an opportunity to speak to his attorney. His requests were ignored. The Southern District Assistant demanded that its informant tell "what he knew", in essence, implicate himself. The Southern District Assistant demanded that its informant record a conversation in connection with its "offshore" investigation of the informant. This may be the clearest illustration of what is wrong with permitting an investigative subject to be both a target and a cooperating witness. The Southern District's informant reflexively cooperated. This time against himself. He recorded that conversation and implicated himself.

As a matter of law, the Assistant may not have abridged the informant's Sixth Amendment constitutional right to have counsel present during that interrogation because the Indictment that the Southern District was ready to present to the Grand Jury had not yet been presented. The constitutional propriety of that interrogation in the extraordinary circumstance of this undercover investigation is sub judice in *United States* v. *Feeney*, supra, in Denver, Colorado. And we express no opinion of how that legal question should be resolved. But whatever the decision of that court, it is clear that such misconduct, even if not of constitutional proportion, should be censured not countenanced by the Department. The Southern District informant, who compromised his safety and spent his own money, was indicted in Denver and New York.

Without funding, the Department lost access to the targets of the investigation. With published stories, secrecy took flight. With the repeated indictments of its informant, the Southern District lost the last critical element to prosecute a case, a witness. What was left?

Having treated their own informant poorly, they afforded special treatment to the principal subject under investigation, John White. There is no doubt that he got special treatment. The Southern District expressly told Mr. White that he was getting "very different" treatment and "information" that was "not usually given". In the presence of his attorney, the Southern District told Mr. White with specificity what were the allegations and evidence against him. The disparate treatment rendered the Southern District's own informant is repugnant to our notions of fair play and equal justice before the law.

Finally, we are at a loss to understand how the Southern District was able to resolve the "serious inconsistencies" between Mr. White's Grand Jury testimony and the evidence. Mr. White demanded that the Committee in its report apologize to him. We recommend the Committee offer none. We find the same "serious inconsistencies" that the Southern District found including Mr. White's statements before the Committee. Frankly, it is our view that "serious inconsistencies" is a charitable characterization of Mr. White's sworn testimony before the Grand Jury and the Committee.

C. STAFF RECOMMENDATIONS

1. We recommend that guidelines be established by or for the Department of Justice that provide that the Department shall not create conspiracies that but for the Department would not exist.

2. Unimpeded governmental functions particularly of the Department of State should be paramount. The Department of Justice should protect, not compromise, such functions in its investigations. We recommend that guidelines be established by or for the Department of Justice that incorporate this standard, provide for the termination of any investigation that violates it, and when possible, seeks the prosecution of investigative subjects, at least for conspiracy, when the investigation terminates.

3. We recommend that guidelines be established by or for the Department of Justice that prohibit more than one investigation of a single conspiracy and establish procedures to consolidate separate investigations of the same conspiracy, if they arise, consonant with the proposition that there shall be only one.

4. We recommend that guidelines be established by or for the Department of Justice that provide that the Department shall decide with respect to each investigative subject that he (she) is either a target or cooperating witness but in no case shall he (she) continue as both target and cooperating witness and, in those cases, that the Department determines that the investigative subject shall be a cooperating witness, that the terms of any agreement with said cooperating witness shall be written in accordance with uniform guidelines to be established by or for the Department of Justice. In any ongoing investigation that an investigative subject is both a target and a cooperating witness, the Department shall immediately decide that the investigative subject is either a target or cooperating witness in accordance with the procedure herein recommended.

It is further recommended that it shall be prohibited ever to discuss proposed changes of the status of the investigative subject with the subject alone; any change shall be discussed only in the presence of the subject's attorney.

5. We do not contemplate any circumstances arising that prevents the Department of Justice from deciding that an investigative subject is either a target or cooperating witness. However, in the event such an extraordinary circumstance ever arises that an investigative subject is both target and cooperating witness, we recommend that guidelines be established by or for the Department of Justice providing that one Assistant U.S. Attorney or Departmental attorney be responsible for the investigation of the subject, a second Assistant U.S. Attorney or Departmental Attorney be responsible for the investigation in which the subject is informing, and a supervising attorney, fully apprised of the separate cases, be responsible for decisions involving both cases including conflicts that arise between the two cases.

In the extraordinary circumstance that an investigative subject continues in this dual status as both target and as a cooperating witness, it is of course our recommendation that any change of status be discussed in accordance with the previous recommendation, that is, in the presence of counsel. In those instances that the change in status is resolved against the investigative subject such that he becomes a target, it is further recommended in view of the possible benefit to the Department from his period of cooperation that guidelines be established by or for the Department providing that, in such cases, the Department state in writing at the time the decision was made what was the nature and extent of the investigative subject's cooperation including the benefit, if any, of said cooperation, what if any evidence the Department received inculpating the investigative subject as a result of his cooperation, and the factors that the Department considered in concluding he (she) should be a target rather than a cooperating witness; that writing shall be provided to the investigative subject or his attorney.

6. It compromises the Department to accept monies from informants to conduct its investigations. It may also compel the informant to seek, as proven here, funds from illegal sources to remain active in the undercover investigation. We accordingly recommend that guidelines be established by or for the Department of Justice that provide that the Department must decide independently that an investigation has merit and is worthy of expenditures of the Department's budget and refuse the offer, however well-intentioned, of an investigative subject to spend his (her) own funds.

7. We make no recommendation as to the Ethics in Government Act. We note that the only error found in this undercover investigation was the Act's application; a Special Prosecutor should have been appointed.

IV. COMMENDATION

It is well that justice is blind for she would not care to see what has been wrought in her name. This investigation is a shame and a disgrace. The FBI created a conspiracy to investigate and investigated it as some elaborate game without rules or purpose. The FBI seemingly lost sight of its mandate to uncover crime, not create it. The FBI and the Department ran this investigation without apparent concern for the consequences to the individuals under investigation or this nation's foreign policy. The FBI's questionable activities in the much publicized ABSCAM investigation caused this Congress to establish a Select Committee to consider the conduct of undercover investigations. The FBI's conduct of this undercover investigation is therefore of special concern not only to the public but also to members of the Select Committee to whom we commend this report.

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